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The State and Sexual Politics: An Analysis of Abortion Discourses in Kenya

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Abstract

Unsafe abortion, an issue that leads to over 2,000 deaths and health complications for more than 21,000 women annually in Kenya, remains largely unaddressed by the Kenyan state. Despite the significant public importance of abortion, there has been little or no scholarly attention directed at the role of the state in shaping sexual politics through its regulation of abortion. In this thesis, I undertake a feminist analysis of the Kenyan state to explore how the state, through its policy regime, shapes sexual politics.

I argue that Western-based feminist theorisations of the state, although useful, do not fully account for the Kenyan state's treatment of the issue of abortion. Consequently, I draw on the range of scholarship in feminist theorisations of the state and in African politics to develop the Critical African Feminist Perspective on the state. Using this perspective, I undertake a discourse analysis of archival material, policy texts, and interviews with key actors in abortion politics. The analysis of the state over three phases – colonial, dictatorial, and democratic – reveals the neo-patrimonial character of the state, resulting in policies and practices that systematically ignore or marginalise issues affecting women.

This study demonstrates that across consecutive governments, the Kenyan political elite, in an attempt to consolidate political power and popularity in the face of low levels of legitimacy and complex tribal politics, has deployed a tactic of “strategic ambivalence”, wherein the law criminalising abortion has been sustained but not enforced. State efforts have therefore been directed at presenting a positive image of itself to both pro- and anti-abortion actors, rather than substantively tackling the problem of unsafe abortion.

The study establishes that although neoliberalism, capitalism and patriarchy play significant roles, neo-patrimonial politics is the key impediment to creating policies and institutions that will ensure Kenyan women's access to safe abortions. I note that although Kenya's new Constitution guarantees women better access to legal abortion, it has not conclusively addressed neo-patrimonialism, which is therefore likely to continue to have negative implications for sexual politics and issues of gender equality in general.

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Chapter 1

Introduction

1.0. Introduction

Abortion, except in rare circumstances, is illegal in Kenya. However, it remains one of the major causes of maternal mortality and morbidity (Ministry of Health, 2005). For example, at least 2,600 women die from unsafe abortion annually, while a further 21,000 women are hospitalized with complications from incomplete and unsafe abortions (Center for Reproductive Rights, 2010). Despite the health and rights implications of access to abortion services, the response of the Kenyan state has been, at best, ambivalent; it has thus far not reversed the colonial legislation denying women access to safe abortion. Yet, almost contradictorily, the state has not sought to enforce the existing laws, refraining from actually prosecuting those involved with procuring and providing illegal abortion.

The abortion conundrum is, in reality, a reflection of what in policy circles are called *wicked* problems – issues that are not easily solved because they are so entwined in a multitude of cultural, social, political and gender politics (Watson, 2000; Wegner, 2009). The Kenyan state's ambivalent response to “the abortion problem”, in many ways, reflects the anomaly of gender politics in Kenya, and indeed, many Third World African states. Despite being a signatory to a wide range of international agreements on women's/human rights, the state has shown little interest thus far in fulfilling its legal obligations by fully decriminalizing abortion and making it widely available for women who seek it. At the same time, in 2010, Kenya adopted a new Constitution that has loosened access to abortion. Overall, the state still continues to maintain its prohibition on most abortions, while failing to enforce it.¹ The state thus situates itself as a defender of sexual morality and conservative ideals while relegating abortion to an unregulated realm

¹ In fact, after adopting a new Constitution in August 2010, Kenya ratified the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (the Maputo Protocol) on October 8, 2010. However, it entered a reservation on Article 14(2) (c), which obliges African states to take measures to ensure availability of abortion in situations of rape, incest and where the physical and mental health of the mother is at risk.

where the ability to pay largely determines who has access to safe abortions and who does not.

The Kenyan state's ambivalent response is not accidental. Rather, it reflects the complex machinery of the Third World African State vis-à-vis gender politics. An analysis of the structures and processes of law-making on women's issues reveals deeper institutional values and ideologies that have significant implications for gender power and equity (Geiger, 1996). To study the politics of law-making around abortion in Kenya, therefore, is to unravel the complex politics of sexuality and the female body in the African context. This complex politics has roots in the historical and contemporary structures of the state, informed as much by colonialism, autocratic rule and recent democratic politics, as by social and cultural values steeped in patriarchy. Yet, despite the significance of this issue for women's rights, public policy, and Third World state politics, little scholarly attention has been directed towards an analysis of the Kenyan state and its regulation of abortion politics. This research offers a critical examination of how the patriarchal and neo-patrimonial nature of the state influences the shape of sexual politics in Kenya, and illuminates how both pro- and anti-abortion actors strategically deploy particular discourses around abortion in their attempts to control political and policy outcomes.

1.1. Background of the Study

Abortion remains one of the world's mostly highly contested issues, and is surrounded by debate and activism. According to Press and Cole (1999, p.1), abortion is "one of the most contested social issues of our time, one firmly straddling the problematic intersection of public policy and private life." As a result, it has been a central issue for contemporary international feminism, and its centrality in policy has been compared to "what the suffrage issue had been to the feminist movement around the turn of the 20th century" (Dahlerup, 1986, p.10). Feminist concern about abortion has focused on its perceived connection to the legal and political constructions of what it means to be a woman citizen of a nation state, how this ties in with the meaning of justice and democracy, and how other social and political differences beyond gender – such as sexuality, ethnicity, religion, and class – fit into a hierarchy of citizenship underwritten by the

institutions of the state (Smyth, 1998). Historically, the abortion question has sparked major controversy in Western liberal democracies and it remains a politically explosive social issue in the United States of America and elsewhere in the world, including many parts of Africa.

Campaigns for the legalisation of abortion peaked in Western Europe, North America and Latin America in the 1960s and 1970s (Lovenduski & Outshoorn, 1986), but it remains a taboo subject in many parts of Asia and Africa. In their arguments, anti-abortionists focus on the moral dimensions of the issue in relation to the rights of the unborn, and therefore actively support criminalising women and abortion providers, and making abortions illegal (Petchesky, 1986). On their part, pro-abortionists have advocated safe abortion as a public health goal and legal abortion as a woman's right (Berer, 2002). The right of women to decide whether to have an abortion has been pursued by feminists, who perceive imposed abortion restrictions as instruments of social control (Petchesky, 1986). Feminists have insisted that when abortion is provided on broad socio-economic grounds and at a woman's request, and when safe, accessible services have been put in place, unsafe abortion disappears and abortion-related mortality and morbidity are reduced to a minimum (Berer, 2004; Sedgh et al., 2012). In fact, when abortion is provided with proper medical techniques and care, the risk of death is negligible and nearly 14 times lower than that of childbirth (Sedgh et al., 2012), as evident in the United States of America and in European countries such as the Netherlands. In the United States, for example, the death rate due to abortion complications fell by more than 50 per cent in the five years following legalisation (Tietze, 1984).

In contrast to Western democracies, in the former Soviet Union and most Central and Eastern Europe countries, abortion on request became policy prior to the use of modern contraceptives (Stenvoll, 2007). It was the primary method of birth control (Stloukal, 1999) mainly because contraceptives were seen as unnatural, inefficient and/or dangerous (Kulczycki, 1999). After the collapse of the Soviet Bloc in 1989, however, abortion rights were among the first to be threatened by virtually all of the post-socialist governments (Kligman & Gal, 2000). Yet, despite growing political conflict around the issue in countries such as Hungary, Lithuania, the Czech Republic, the Slovak Republic, and the former German Democratic Republic, abortion policies have remained relatively permissive

(Flood, 2002). In Romania, Bulgaria and Albania, restrictive abortion regimes that existed prior to the transition have been liberalised, leading to reduced abortion mortality (Grimes et al., 2006).

The situation has been different in most developing countries, where almost all unsafe abortions in the world are now carried out. In these countries, restrictive abortion laws were introduced by European colonial powers that have since changed their laws, but unsafe abortion is yet to be addressed by policymakers, even though it has been identified as a significant health and social problem (Grimes et al., 2006; Kulczycki, 1999). It is notable that in India, elective abortion was legalised as part of population policy under the Medical Termination of Pregnancy (MTP) Act (1971) and MTP Rules (1975) (Iyengar & Iyengar, 2002), while some African countries, including Benin Republic, Burkina Faso, Chad, Guinea, Mali, Ghana, Zambia, Ethiopia, Tunisia, and South Africa, have also liberalised their laws (Braam & Hessini, 2004; Gebreselassie et al., 2010). However, in many other developing countries in Africa, including Kenya, the abortion issue remains a delicate one, presenting a complex moral and ethical dilemma to governments and policy makers (Oye-Adeniran et al., 2002). This is despite the fact that unsafe abortion remains a leading cause of death among women of childbearing age. According to the World Health Organisation, more than 6 million unsafe abortions occur in Africa annually, resulting in 29,000 deaths, more than half of the world's estimated 47,000 deaths (Mesce & Clifton, 2011). Additionally, Africa has the world's widest range of abortion rates, with Middle and Eastern Africa having rates as high as 38 and 36 abortions for every 1000 women (Sedgh et al., 2012). It is evident from these figures that restrictive abortion laws have not led to a reduced need for abortion.

This situation is particularly evident in Kenya. In Kenya, unsafe abortion is seen as contributing to between 30-50 per cent of maternal mortality and morbidity (Otsea, 2004), in addition to 60 per cent of all gynaecological admissions at public hospitals (Gebreselassie et al., 2005; Wamwana et al., 2006). Although access to safe, effective contraception could substantially reduce the need for abortion, unmet need for family planning remains high, with one in four women having an unmet need (Ian et al., 2009). A major reason behind the low use of family planning is poor access to contraceptive services (see Chapter 7). Because

international donors such as the United Nations Population Fund (UNPF) and the United States Agency for International Development (USAID) have historically covered the costs of all contraceptives in Kenya, a shift in international attention to HIV/AIDS programmes since the 1990s has led to constant commodity stock outs and lack of methods of choice (Crichton, 2008). The Kenyan government has been slow in responding to the shifting international aid allocations, and in fact, it was only in 2005 that the government allocated 200 million Kenyan Shillings, or US\$2.62 million, for contraceptive commodities (ibid.). Obviously, the likelihood that a woman will seek to terminate an unintended pregnancy increases with unmet need for family planning.

1.2. The Legal Context of Abortion in Kenya

In pre-colonial Kenya, matters concerning women's bodies, including on issues of sexuality, sexual practices, and access to abortion, were governed by tribal traditions and norms. Abortion was not only permitted, but was in fact required under certain circumstances (see Chapter 3). In the colonial period, the state instituted a series of policies creating or reinforcing political, economic, and social structures, with profound implications for gender equity and sexual politics that continue to the present day. Current abortion laws in Kenya, as in other British Commonwealth countries around the world, were inherited from the English Common Law during colonialism (Cook & Dickens, 1981). The laws criminalized abortion except where it was procured to save the life of a pregnant woman (Ngwena, 2010).

These laws operated in Kenya until 2010, when a new Constitutional order was adopted.² Although the new Kenyan Constitution has expanded the exceptions in which legal abortion could be offered,³ implementing laws are yet to be introduced and therefore the chief statute that can be construed as governing the

² This document is available at <http://www.kenyaembassy.com/pdfs/The%20Constitution%20of%20Kenya.pdf>

³ Article 26(4) provides that "abortion is not permitted unless, in the opinion of a trained health professional, there is need for emergency treatment, or the life or health of the mother is in danger, or if permitted by any other written law." (p. 24)

prohibition of abortion is the Penal Code (Cap 63 Laws of Kenya).⁴ Under Sections 158,⁵ 159,⁶ and 160,⁷ the law criminalizes the woman and the person who provides the abortion, with the two liable for prison sentences of up to 14 years if found guilty. Section 240,⁸ though, provides an exception by allowing for legal abortion to save a woman's life. However, the law does not go further to explain the circumstances in which lawful abortions might be provided, although there have been expansive interpretations of this exception issued by the Ministry of Health and the Medical Practitioners and Dentists Board, allowing for abortions to be lawfully performed in cases of risk to the woman's health, or in some cases of rape (Center for Reproductive Rights, 2010). Unfortunately, few medical health providers in Kenya are trained on the full provisions of the law and most women remain unaware of the law's exceptions, thus making safe and legal abortions in Kenya rare (ibid.).

Additionally, there is the National Reproductive Health Strategy (NRHS) 1997-2010, aimed at eradicating all forms of discrimination against women and the girl child, enabling them to exercise their reproductive and sexual rights. However, this policy document does not mention abortion, not even as an acknowledgement of the magnitude of unsafe abortion in the country (Ministry of Health, 1996). The same applies to the National Population Policy for Sustainable Development

⁴ This document is available at <http://www.kenyalaw.org/Downloads/GreyBook/8.%20The%20Penal%20Code.pdf>

⁵ "Any person who with intent to procure miscarriage of a woman, whether she is or is not with child unlawfully administers to her or causes her to take any poison or other noxious thing or uses any force of any kind, or uses any other means whatever, is guilty of a felony and is liable to imprisonment for fourteen years." (Penal Code, p. 66)

⁶ "Any woman who being with child with intent to procure her own miscarriage, unlawfully administers to herself any poison or other noxious thing, or uses any kind, or uses any other means whatever, or permits any such thing or means to be administered or used to her, is guilty of a felony and is liable to imprisonment for fourteen years." (Penal Code, p. 66-67)

⁷ "Any person who unlawfully supplies or procures for any person anything whatever, knowing that it is intended to be unlawfully used to procure the miscarriage of a woman whether she is or is not with child, is guilty of a felony and is liable to imprisonment for three years." (Penal Code, p. 67)

⁸ "A person is not criminally responsible for performing in good faith and with reasonable care and skill a surgical operation upon any person for his benefit, or upon an unborn child for the preservation of the mother's life, if the performance of the operation is reasonable, having regard to the patient's state at the time and to all the circumstances of the case." (Penal Code, p. 85)

2000,⁹ which also fails to take any real initiative on the issue of abortion. It declares that abortion will not be used as a method of family planning and that every effort will be made so that the need for abortion is eradicated through education and counseling. Surprisingly, the National Reproductive Health Strategy (NRHS) for the period 2009-2015 also ignores the issue of unsafe abortion, only identifying post-abortion care as one of the strategies for accelerating the attainment of the Millennium Development Goals related to Maternal and Newborn Health (Republic of Kenya, 2009). This is despite the fact that the same report recognizes unsafe abortion as one of the five direct causes of maternal deaths in Kenya (ibid.).

Although these restrictions on abortion exist, they have failed to curb backstreet abortions, as evidenced by the figures presented above and discussed in more detail in Chapter 7. Furthermore, the law has not been implemented, as prosecution of abortion providers, and of those who receive them, is unusual in Kenya. This is despite the fact that newspapers often carry reports of discarded fetuses and of women dying after attempting to terminate their pregnancies. While the majority of women with unwanted pregnancies from the lower socio-economic stratum are forced to seek abortions from those unqualified to perform such procedures, those from the higher socio-economic stratum can illegally secure a safe abortion from trained physicians or travel to countries where it is legal. This results in further discrimination against poor and younger women, who cannot afford the clandestine fees charged by doctors to terminate a pregnancy. In fact, qualitative research on abortion in Kenya seldom mentions fear of prosecution as a concern informing a woman's decision on how and where to have the abortion (Izugbara et al., 2009). Rather, most concerns are over the safety and expense of various methods and providers.

Access to abortion services, clearly, has implications not only for public health and national development indicators, but also for women's rights, gender equity, and social justice. Yet there is little scholarship to explain why the Kenyan state regulates sexual politics, and specifically abortion politics, as it has. This research attempts to identify the nature and characteristics of the Kenyan state that shape

⁹ Available at <http://www.ncapd-ke.org/UserFiles/File/nppsd.pdf>

the domain of sexual politics through the regulation of reproductive practices that in turn bolster gender inequality. As feminist researchers have clearly noted, although the state is not monolithic, it does mediate or deploy a vast array of powers that profoundly shape women's lives – physical, economic, sexual, reproductive, and political (Rajan, 2010).

1.3. The State and Sexual Politics

The state is a pivotal actor that, in all its heterogeneity, significantly shapes access to power and resources in ways that are profoundly gendered. Feminist scholars have developed a large body of theory on the state which embraces many different strands, including liberal, radical, socialist and post-structuralist theories (see Chapter 2). Earlier work by liberal, radical, and socialist feminists focused on women as a homogeneous group and concentrated on a centralised state's role in reproducing patriarchal social relations (Ferguson, 1984; MacKinnon, 1989). Later work by post-structuralist feminist scholars unearthed how states are differentiated entities, comprised of multiple gender arrangements (Haney, 2000). Questioning the traditional conspiratorial notions of state patriarchy, later feminist theorists have demonstrated the various ways in which states shape, and are shaped by gender relations (Chappell, 2002; Connell, 1990).

Although these theories remain relevant in accounting for the gendered and patriarchal nature of states, they do not conclusively account for African states in general, and the Kenyan state in particular. This is not just because the theories are Western-based, but because they lack a historical gendered consciousness of African histories (Agarwal, 1992; Chhachhi, 1991; Mama, 1995a; Rai, 1996; Yuval-Davis & Anthias, 1989). These Third World post-colonial scholars have, for example, argued that the colonial period and process of decolonisation were critical ruptures in the history of colonised states. It is, therefore, impossible to understand the nature of Third World post-colonial states without reflecting on the legacy of colonialism, because independent post-colonial states retained the administrative, legal and bureaucratic features introduced by the European colonisers, which were largely gender discriminatory. These features were retained mainly because dismantling the colonial framework of governance was considered to be inimical to the interests of the ruling elite (Kandiyoti, 1991).

These elites, in an attempt to build their power bases and increase legitimacy, sought and continue to control, survey, and discipline women's lives to placate key interest groups (Stamp, 1991). In addition, feminist scholars have pointed out how the Third World "state's discourses surrounding gender, influence the nature of development policy formulated by the state" (Simon-Kumar, 2006, p. 90). It is, however, noteworthy that Third World feminist theorising of the state, with some important exceptions, does not sufficiently explain the gender politics of the African state as there is tendency to concentrate on patriarchy¹⁰ and culture as the major reasons behind gender discrimination particularly in Africa (Gordon, 1996; Maseno & Kilonzo, 2011; Parpart & Staudt, 1989).

In order to understand the Kenyan state's contradictory responses and actions on the issue of unsafe abortion, it is important to consider its neo-patrimonial nature. Neo-patrimonialism is commonly understood as a hybrid regime consisting of, on the one hand, an exterior of modern, formal, rational-legal, state-like apparatus, and on the other hand, a patrimonial spoils network in which centralised elites mobilise political support by using their public positions to distribute jobs, rent-seeking opportunities, and resources as personal favours (Bratton & van de Walle, 1997). As a result of neo-patrimonialism, the Kenyan ruling elite have been unwilling to enforce and campaign for women's rights for fear of losing support from men in general, and particularly from male-dominated traditional and religious groups. I demonstrate that, much more than liberalism, capitalism and patriarchy, it is neo-patrimonial politics, coupled with related practices such as clientelism and corruption, the politics of exclusion and marginalization, as well as governmental manipulation, co-optation and subversion, that impede African and Kenyan women's ability to access reproductive freedom (see Chapter 4).

1.4. Post-Independence Kenya: An Overview of Political Regimes

In this section, I provide a short history of the character and operation of the three post-colonial political regimes in Kenya following Independence. This historical sketch comprises an essential background to understanding the nature of the contemporary Kenyan state.

¹⁰ Patriarchy is defined in very liberal terms to apply to virtually any form or instance of male domination (Kandiyoti, 1988).

Kenya gained Independence from Britain on 12th December 1963. The independence Constitution provided for a multiparty democracy, a freely elected bicameral Parliament, and guaranteed judicial independence (Asingo, 2003; Makau, 2001). However, President Jomo Kenyatta, who ruled Kenya from 1963-1978, considered the inherited Westminster System with a dual executive unsuitable and embarked on systematic amendments of the Constitution that transferred power from other arms of government to the executive (Odhiamb-Mbai, 2003). The first Constitutional Amendment transformed Kenya into a republic and created the position of the President, who became both the Head of State and Head of Government (ibid.). The resultant concentration of all executive power in the Presidency paved the way for a “despotic executive” (Makau, 2001, p. 97) that was characterised by systematic clientelism, wherein public sector jobs, material rewards and economic opportunities were offered as favours to clients who mobilised political support and loyalty for the patron (Asingo, 2003).

Upon President Kenyatta’s death in 1978, Daniel arap Moi assumed power and ruled until 2002. Moi followed in Kenyatta’s footsteps, undertaking reforms to increase the powers of the President (Adar, 2000; Makau, 2001). Scholars have argued that Moi exacerbated most of the negative practices predominant during Kenyatta’s era, particularly repression, patronage, widespread corruption, nepotism, and various ethnic and human rights abuses. Kyle (1999, p. 203), for example, notes that during Moi’s regime, “the scope for criticism and free debate, already limited, was continually narrowed, civil society crippled and human rights infringed.” During Moi’s rule, corruption increased enormously, as he needed resources to reward clients and voters loyal to the government, which had become increasingly authoritarian and repressive (Nasong’o & Murunga, 2007).

Following local and international pressure, President Moi in 1991 reluctantly agreed to repeal the law which had made Kenya a one-party state, and allowed for the holding of multi-party elections (Adar, 2000). As a result of multiple factors, among them politically instigated ethnic violence¹¹ and patronage politics,¹² as

¹¹ President Moi’s government has been accused of sponsoring ethnic violence to discredit multi-partyism as a system of governance, and also to disenfranchise voters opposed to him (Asingo, 2003; Oyugi, 1997).

well as the fragmentation of the opposition, Moi won the multi-party elections held in 1992 and in 1997 (Brown, 2004). Seemingly, the transition to democracy did not bring any meaningful change, as Kenya continued as an autocratic state under Moi. Odhiambo-Mbai (2003) notes that:

Corruption continued unabated in public life; President Moi and key officials continued to manage public institutions in total disregard to the law; President Moi continued to pronounce decrees even when such decrees were in total conflict with the country's constitution and laws; the executive and especially the presidency remained more powerful than the other branches of government. (pp. 67-68)

President Moi retired from politics in 2002,¹³ after his preferred successor, Uhuru Kenyatta, was defeated in the general election by Mwai Kibaki (Asingo, 2003).

Mwai Kibaki assumed office in January 2003, with a promise to “institute a new constitutional dispensation, rein in corruption, initiate development, bring security to the country and improve the lives of all Kenyans” (Lynch, 2006, pp. 240-41). Although Kibaki's government ensured a sustained economic growth, the politics of ethnic favouritism, patronage and grand corruption prevailed to a degree that eclipsed the excesses of the Moi regime (Berman et al., 2009; Nasongo & Murunga, 2006). In 2004, for example, western donors alleged that corruption had cost the Kenyan treasury US\$1 billion since Kibaki took over power. Kibaki's government also failed to honour the promise to deliver a new Constitution within one hundred days of assuming power (Berman et al., 2009). As a result of disagreement between the ruling coalition partners, the draft Constitution subjected to a referendum in 2005 was rejected by a majority of voters (ibid.).

However, following the post-election violence that followed the disputed 2008 presidential election in which Kibaki was declared the winner, an internationally negotiated power-sharing agreement between the two contending parties singled out constitutional reform as crucial in order to avert future violence (Kramon &

¹² For example, a few weeks before the 1992 elections, President Moi raised the salaries of teachers, lecturers and civil servants in an attempt to attract their votes (Adar, 2000). Among other directives, Moi also asked employers to give Muslims time off on Fridays to enable them to attend prayers and to provide women with housing allowance (ibid.).

¹³ The 1991 constitutional changes in Kenya which re-introduced multi-party democracy also provided for a limited presidential tenure of two-five year terms.

Posner, 2011). A new Constitution was adopted in August 2010 after a national referendum. The new Constitution established rules, values, and principles that, if implemented, will facilitate the realization of equality and inclusive citizenship. In sum, it established the framework for the restoration of constitutional democracy in Kenya.

1.5. Research Questions

Although Kenyan women's reproductive capacity has received significant attention from researchers and medical health professionals (Aggarwal & Mati, 1982; Ankomah et al., 1997; Baker & Khasiani, 1992; Bradley et al., 1993; Centre for Reproductive Rights, 2010; Gebreselassie et al., 2005; Izugbara et al., 2009; Izugbara et al., 2011; Johnson et al., 1993; Lema et al. 1996; Mitchell et al., 2006; Mutungi et al., 1999; Ngwena, 2010; Nyambaka, 1987; Ojwang' & Omuga, 1991; Solo et al., 1999), none of these existing studies has focused on the connection between the nature of the Kenyan state and the state's unwillingness to decriminalize abortion.

Most of these studies, published in medical and health related journals, mainly focus on issues such as the epidemiology of induced abortion, complications and management of abortion, costs for the treatment of incomplete abortion, the magnitude of abortion complications, relationship between abortion and family planning, and characteristics of women who abort, among other things. In sharp contrast, this study focuses on a feminist analysis of the nature of the African state, specifically Kenya, and illuminates how and why it regulates women's access to abortion in the way that it does.

This research is fundamentally an analysis of the sexual politics of the Kenyan state in colonial and post-colonial contexts. It explores how and why the Kenyan state negotiates as it does the issues surrounding women's bodies, with a specific reference to women's access to safe abortion. It does this through an analysis of the complex political, economic, and cultural contexts that frame the relationship between the state and non-state actors, that in turn shape gendered power relations in Kenya. Drawing on a post-positivist and feminist stance, this research analyses the interactions and relationships between the state and non-state institutions on

matters relating to control over women's bodies in historical and contemporary periods.

The core question addressed in this research is:

- In what ways do the political, economic, and socio-cultural institutional contexts of the Kenyan state fundamentally shape the politics of women's bodies?

Some specific research questions addressed are:

- How can the Kenyan state be theorised from a feminist perspective?
 - In particular, what are the implications of the evolution of the Kenyan state from the colonial to the contemporary post-colonial state for the sexual politics of abortion?
- How have the discursive struggles between key state and non-state actors informed the sexual politics of the state, in contemporary and historical periods?
 - In the context of abortion, how have anti- and pro- abortion actors deployed particular discourses to sustain or challenge the current restrictions on abortion, and with what consequences?
- What factors explain the success or failure of Kenyan women's organizations in influencing sexual politics broadly, and the abortion issue in particular?

Overall, this research seeks to unearth the factors behind the Kenyan state's contradictory positions on unsafe abortion through an analysis of the multiple and contested discourses, values, worldviews, and belief structures of key actors in the abortion arena. In particular, it examines the institutionalization of patriarchal power by the state, as well as the various ways in which the state's neo-patrimonial nature influences not just women's experiences of abortion, but also women's ability to organize against the state.

1.6. Discourse, Policy and Gender

This intellectual inquiry into the Kenyan state's ability to influence abortion politics as well as the discourses of non-state actors on abortion is important for two reasons. First, in order to realise an effective public policy, the processes by which abortion in Kenya is made controversial, and the nature of dominant perspectives in support of particular social policies by pro- and anti-abortion actors, need to be better understood. That is, in order to understand abortion politics in Kenya, it is necessary to analyse the rhetoric of those in positions to influence policy, with the hope of discerning the ways in which the issue is named, framed and debated, as different articulations of the abortion problem and the suggested solutions have the capacity to affect policy outcomes (Feindt & Oels, 2005; Hajer, 1995). This is in line with the objectives of discourse analysts, who have demonstrated how versions of reality, also referred to as discourses, are assembled and accomplished in the way individuals talk about physical and social realities to give them meaning (Edwards & Potter, 1992; Hajer, 1995; Potter & Wetherell, 1987). Moreover, research on policy processes has shown that policy change is not simply a technocratic process based on rational analysis. Rather, it is largely a complex, messy and power-laden process in which both state and non-state policy actors play important roles in bringing about policy change (Fischer, 1995; Grindle & Thomas, 1991; Parsons, 1995).

Second, the state is instrumental in shaping and implementing any policy changes that could result in improved reproductive health care for Kenyan women. In a practical sense, the findings of this research have the potential to inform policy makers in Kenya by providing a new way of understanding the politics of abortion. Since no researchers have studied the link between the nature of the state and the way it shapes sexual politics, the Kenyan state's contribution to women's inability to access safe legal abortions may have been missed.

1.7. Methodology

A feminist qualitative methodology informed by Foucauldian discourse analysis was used for this study (see Chapter 3). The adoption of qualitative research strategies facilitated the collection and analysis of discourses, arguments and worldviews, articulated by state and non-state actors in the abortion debate in

Kenya. However, documents such as demographic health surveys and census reports, whose data must have been generated through the use of quantitative methods, were useful in providing information on the use of contraceptives, prevalence of unsafe abortion, and costs of treating resultant health complications, among others.¹⁴

Both primary and secondary data was used for the study. Primary data was generated through qualitative semi-structured interviews conducted with state policymakers, religious leaders, health professionals, women's and human rights activists. Secondary sources of data include published and unpublished materials on abortion and related issues such as female circumcision. Specifically, secondary data was useful in clarifying claims made by pro- and anti-abortion actors on, for example, the magnitude of abortion in Kenya. Anti-abortion actors, for example, accused pro-abortion actors of overrating the number of abortions to justify their campaign for abortion decriminalization, whereas pro-abortion actors accused those opposed to abortion of underestimating statistics of abortion. In such a case, studies conducted either by the Kenyan state or non-state organizations were used to provide more objective information.

1.8. Chapter Outline

The thesis is organised into eight chapters. This chapter (Chapter 1) has provided an overview of the study, its main objectives, and the rationale, while Chapter 2 presents the theoretical considerations that have guided this research. The first section of the second chapter explores diverse Western feminist perspectives on the state, with the aim of evaluating their ability to account for the Kenyan state's treatment of the issue of unsafe abortion. The second section of Chapter 2 presents my analysis of additional factors that ought to be taken into account when attempting to explain the nature and conduct of the African state in relation to sexual politics. Chapter 3 provides details of the methodology used, including methods of data collection and analysis. This chapter also provides a description of how Foucauldian discourse analysis has been used to understand how different

¹⁴ In fact, some early feminist researchers, such as Jane Addams and Harriet Martineau, have noted the need for gendered statistics to demonstrate the reality of women's lives (MacDonnald, 1993).

actors in the abortion debate in Kenya construct the issue differently and for different reasons.

To demonstrate the importance of a clearer appreciation of the nature of the African state in understanding discourses of abortion in Kenya, Chapter 4 provides an analysis of colonial racial and sexual politics, and shows how the interplay of gendered and religious legacies of colonial rule continue to affect the post-colonial state's treatment of the gender question in general, and unsafe abortion in particular. Using the female circumcision controversy as an example, Chapter 4 demonstrates how the colonial state not only introduced, but actually provided a model for, the civil management of women's sexuality for state and elite interests.

Chapters 5 to 7 focus on data analysis. Chapter 5 provides an analysis of abortion politics exhibited by state and political actors, with the aim of demonstrating the Kenyan state's role in shaping the abortion debate, and also how the interaction of gender discourses and political practices has shaped the process of dealing with the issue of unsafe abortion. An analysis of the Kenyan state and political actors is significant in this research mainly because both anti- and pro-abortion activists appeal to the state to either liberalize the law criminalizing abortion, or to retain it.

Chapter 6 seeks to investigate the discourses and discursive strategies used by Kenyan anti-abortion actors in establishing the legitimacy of their stance. In addition to providing an analysis of the four major discourses that are used by anti-abortion actors to oppose decriminalization of abortion and their policy implications, this chapter shows that the nature of Kenyan politics has led to the cultivation of networks of reciprocity between mainly secular political leaders and religious anti-abortion actors, leading to the legitimation and institutionalization of anti-abortion discourses, as opposed to the pro-abortion discourses discussed in Chapter 7.

Chapter 7, which provides a detailed analysis of pro-abortion discourses in Kenya, focuses on the arguments, philosophical principles, narratives and other important rhetorical strategies that are employed by pro-abortion actors in an attempt to counter the institutionalized anti-abortion discourses discussed in Chapter 6. This

chapter shows that a myriad of factors, both national and international, influence the type of pro-abortion discourses in Kenya.

Chapter 8 provides a discussion and summary of the major findings of this research and offers suggestions on the way forward. The thesis concludes that even though the newly promulgated Constitution of 2010 seemingly guarantees women better access to legal abortion, it has not, and possibly cannot, address neo-patrimonialism, and particularly its clientelist facet. As such, it is likely that clientelist politics will continue to have negative implications for sexual politics and issues of gender equality in Kenya, as the generally male dominated party leaderships may select female leaders that are close to them, either ideologically or literally in terms of family or blood ties, as has been witnessed in neighbouring countries.

Chapter Two

Accounting for the State in Abortion Politics

2.0. Introduction

The issue of abortion has often been politically marginalised (Lovenduski & Outshoorn, 1986), although it has been a central issue in contemporary international feminism. Feminist interest in the abortion issue normally targets the institutions of the state, as abortion is usually regulated by state laws (Smyth, 1998). As such, a study that seeks to provide a feminist analysis of the regulation of sexual politics in Kenya ought to begin by situating the Kenyan state within feminist theories of the state. This is because the Kenyan state's action and/or inaction on abortion may be a result of its structure, institutions, and ideologies, all of which may also impact on the ways in which actors in the abortion debate, including feminists, struggle to engage with the state to shape abortion laws and practice.

As noted in Chapter 1, the Kenyan state has expressed an interest in abortion by legislating against it. To explain the state's actions, I first explore diverse feminist perspectives on the state, as this provides a crucial starting point in understanding the Kenyan state's persistent unwillingness and/or inability to conclusively address the issue of unsafe abortion. I argue that, although useful, mainstream Western feminist theorizations of the state are not sufficient to account for African states in general, and more particularly, the Kenyan state's treatment of the issue of abortion. Specifically, the theories lack a gendered consciousness of African histories, and more so of the gendered effects of colonialism and the realities of the resultant neo-patrimonial nature of post-colonial states. Unlike the modern welfare state that underpins Western-based feminist theories of the state, the state in Africa, since colonial times, has been noted to be bureaucratic and undemocratic, and involved in patterns of looting and extraction (Crais, 2002). This has had profound impacts on gender power and gender relations. Moreover, contrary to the claims of some Western feminist analysts, African women were not always powerless; rather, the colonial masters engineered the decline of

women's rights¹⁵ for state and political elite benefit (Oyewumi, 2003; Tamale, 2008). For example, it is widely acknowledged that African women's subordination resulted from their incorporation into the colonial economy as subsistence producers and reproducers of male wage labour in the service of the colonial state and capital (Martin, 1984). This intervention reshaped African women's role in agriculture, their political power, and even their access to the colonial state, all to their disadvantage. As Western feminist theories of the state ignore such histories of non-Western women, they fail to understand and therefore to take into account the complexities that shape African women's experiences (Mama, 1995a).

Following this critique of existing feminist theories of the state, I argue that neo-patrimonial politics, coupled with related practices such as the politics of exclusion and marginalization, as well as governmental manipulation, co-optation and subversion, have to be taken into account in the formulation of a framework that could be used in explaining and understanding the African state. I thus propose an analytical framework (see Table 1), the *Critical African Feminist Perspective*, which draws on some relevant aspects of liberal, radical, socialist and post-structuralist feminist theorizations of the state, but also includes the concept of neo-patrimonialism. This analytical framework provided the lens through which I examined the ways in which the Kenyan state shapes abortion politics. In essence, this chapter demonstrates why the state is an important site to consider while attempting to understand the politics of abortion in Kenya, both because of its role in influencing women's access to safe abortions, and also because it is an important site for the exercise of policy influence (Gouws, 2004). This chapter also demonstrates that an adequate theoretical understanding of the state's role in relation to the abortion issue requires a nuanced appreciation of the interactions between neo-patrimonialism and various aspects identified by different feminist theories of the state. For instance, the liberal feminist insistence on the importance

¹⁵In the pre-colonial era, presumably before the 19th century, women had various forms of status as farmers, traders, mothers, elders, members of secret societies, and religious figures. The failure of the colonists and agents of the colonial state to understand complex and intricate gender relations led to the portrayal of the African woman as a *beast of burden* due to her farming responsibilities, the presence of polygamy, and of bride-price and female circumcision (Oyewumi, 2003).

of legal reforms to ensure women's access to public life is useful in explaining the politics of abortion in Kenya. Additionally, the radical feminist concept of patriarchy, and the socialist feminist focus on class analysis as well as the link between patriarchy and capitalism, are equally important for this study. Lastly, the post-structuralist feminist view of the state as non-unitary, and the recognition of the ways in which women's bodies and sexuality may be regulated and/or disciplined for the benefit of those in power, are relevant in explaining the Kenyan state's multiple contradictory discourses about abortion and the women who seek them.

2.1. Feminist Theories of the State

It is perhaps a truism to state that feminism does not refer to a unitary body of theory (Dietz, 2003). Rather, there are multiple perspectives that fall under the rubric of feminism, each of which makes different assumptions about the source of gender inequality and women's oppression (Burgess-Proctor, 2006). Feminist engagement with the state has therefore proceeded from a variety of philosophical perspectives, among them liberal, radical, socialist and post-structuralist theorizations. In what follows, I provide a discussion of these approaches, with the aim of showing that although they have dominated contemporary feminist analyses of the state, they fail to account for some of the complex realities of African states. At the same time, I demonstrate how the different feminist theorizations of the state direct and/or affect their understanding and treatment of the issue of abortion. A discussion of feminist approaches to the state is central to this study mainly because they provide a starting point in understanding not just the Kenyan state's treatment of the abortion question, but also how the state influences the nature and structure of the discourses that are articulated by both pro- and anti-abortion actors in the country.

2.1.1. Liberal Feminism and the State

Although liberal feminism takes various forms, they all share the view that freedom is a fundamental value for women, as much as for men (Wendell, 1987). Liberal feminism is grounded in the claims of classical liberal philosophy developed by Locke, Bentham and Mill for equal rights, individualism, liberty and justice (Andermahr et al., 1997). Embracing all these tenets of liberalism, liberal

feminism holds that men and women are fundamentally similar and, as such, women deserve the same opportunities and legal rights as men. Liberal feminists argue that unlike men, women are unable to enjoy their freedom because women's needs and interests are often insufficiently reflected in the male-dominated institutions of the state (Okin, 1989; Pateman, 1988). Discrimination against women is seen as resulting from their lack of access to various aspects of public life, including education, paid work, politics and so on. To enable women to participate equally in all spheres of life, liberal feminists point to the state's basic responsibility of, firstly, treating each citizen with equal concern and respect, and secondly, securing individuals' freedom to pursue their own objectives to an extent consistent with similar freedom for others (Rhode, 1994). For liberal feminists, state institutions should protect fundamental rights that are essential to liberty so as to ensure the minimum conditions for individuals to exercise such rights (Rhode, 1990).

An important aspect of the liberal feminist sense of citizen entitlement is autonomous private choice, free from public intervention. As Becker (1999) explains:

Liberal feminism assumes that people are autonomous individuals making decisions in their own self-interest in light of their individual preferences. Human well-being therefore should increase as individuals have more choices. Sexism operates by pressuring and requiring, sometimes by law, individuals to fulfil male and female roles regardless of their individual preferences. The solution to inequality between women and men is to offer individuals the same choices regardless of sex. The legal standard of formal equality is an expression of this solution. (pp. 32-33)

This being the case, liberal feminism has usually concentrated on pursuing the equality of men and women through political and legal reform on issues such as citizenship, property, personal rights and the rule of law.

Although the citizen is presented within liberal theory as an unsexed individual abstracted from their social context (Connell, 1994), the state is considered important in that it may be a source of empowerment for women if and when it offers them the opportunity to make gains in economic and political terms (Waylen, 1998). Entrenched in the philosophy of liberalism's notion of the state as being fundamentally concerned with justice and equality, women are held to

suffer from discrimination only because of their sex (van Acker, 1999). By seeking reforms of particular laws obstructing women's freedom and equality, liberal feminists seem to consider the state a neutral arbiter between conflicting interests, as well as a guarantor of individual rights to both men and women (Waylen, 1998). For these feminists, legal reform aimed primarily at increasing women's professional and occupational stature, alongside women's participation in state initiatives, legislation and policies, can promote equality and address women's concerns. A clearly distinguishable characteristic of liberal feminists is their reliance on legal remedies as a strategy for addressing women's needs.

In relation to abortion, liberal feminists have supported women's access to safe abortion as a basic right rooted in the classic liberal ideology of privacy, autonomy, and individual choice (Morrison, 1995) and envisaged by the United States of America Supreme Court in *Roe v. Wade* in 1973 (Weisberg, 1996). Conceived this way, individual women are characterised as capable of making personal and private abortion decisions without government interference. Additionally, given liberal feminists' acceptance of the public-private distinction and support for the right to freedom from governmental scrutiny, abortion is considered to belong in the realm of the private, and therefore as immune from government and legal intervention (Kim, 2006).

2.1.1.1. Critique of Liberal Feminism

Although formulating abortion in terms of women's right to autonomous decision-making extends to women the traditional liberal values of liberty, possession of self, and opportunity to participate in the public domain as free citizens, other feminists have considered the privacy doctrine a double-edged sword, with the tendency to constrain as well as to expand reproductive rights (Copelon, 1990; Solinger, 2001). For instance, as has happened in the United States of America, governments can argue that because abortion is a private issue, public revenue need not be used in providing abortion services (Bacchi, 1999). This has the obvious consequence of limiting poor and vulnerable women's ability to access safe abortions, thus rendering it an economic issue (Solinger, 2001). Moreover, in countries where a majority of the victims of unsafe abortion are poor women who are incapable of paying for safe services, the government's failure to provide free

or subsidised safe abortions would not reduce the number of unsafe abortions. Rather, women would most probably continue having unsafe abortions, even if it were legalised.

Additionally, as a result of viewing abortion as an issue relating to individual women's autonomy, liberal feminists are unlikely to problematize the placement of abortion under the control of medical professionals. By alluding to the right to privacy, the Supreme Court in *Roe v. Wade* upheld the physician's right to make a medical decision, and not a woman's right to choose whether to give birth or not (Saulnier, 1996). The privileging of doctors in abortion decisions, together with prohibiting the use of state funds for elective abortions, effectively restricts the right to privacy between a woman and her doctor, thereby limiting access to safe abortion (ibid.). Eisenstein (1981), for example, has argued that:

Women... *are free from* interference by the government in their decision to have an abortion. This does not require that government "interfere" by making public funds available to them. *The right to privacy* in the case of welfare women is just what they do not need. An abortion law based on this right actually denies women the state aid they require.... It is politically important to make clear to women that their right to control their bodies has not been accepted as a tenet of the state. (pp. 240-241)

Moreover, seeing abortion from a gender equality perspective has been found inadequate because within the context of reproduction, such as pregnancy and abortion, women and men are not similarly situated biologically (Weisberg, 1996). This is complicated by the fact that liberal feminist theory has been focused on rejecting arguments based on biological differences between men and women and, as such, it has been difficult to fashion a liberal feminist theory of pregnancy that supports women and childbearing without reopening the door to paternalistic protection of women by the state (Choudhury, 2011).

Criticism of liberal feminists' understanding of abortion resonates with the general criticism of liberal feminism. Although they have made significant contributions in highlighting and institutionalising women's needs in state institutions, entitlements, and resource allocation (Staudt, 1998), liberal feminists have been accused of producing a theory that has tended to assume the characteristics of white, first-world, heterosexual, and middle-class women, and to

marginalise or exclude the experiences of *other* women (Barriteau, 2006; Hunter, 1996). As a result of using the experiences of middle class women as a normative position from which to judge the nature and degree of discrimination against all women, liberal feminists posit a universalised woman, whose experiences are primarily determined by gender. However, in describing all women as being discriminated against only on the basis of gender, liberal feminism seems unconcerned with and unresponsive to the lives of women who experience sexism only as one aspect of oppression (Harris, 1990). Many Third World feminists and marginalised women have thus rejected liberal feminism's view of a quintessential female experience, pointing out that their experiences of oppression are influenced by their race, ethnicity, class, colonisation, religion and/or sexual orientation, as well as gender (Andersen & Collins, 2004; Burgess-Procto, 2006; Parashar, 1993). As Ansley (1989) has noted, these forms of oppression interpenetrate, converge and reflect on each other, interlocking to produce complex hierarchies of power and inequality. Moreover, by claiming that all women are equal, and that there are no systemic or patterned differences between groups of women, liberal feminism not only privileges middle-class gendered experiences, but also leaves *other* women's experiences untheorised (hooks, 1984; Flax, 1993; Morton-Robinson, 2000). This critique is evident in Audre Lorde's (1984) claim that:

By and large, within the women's movement today, white women focus upon their oppression as women and ignore differences of race, sexual preference, class, and age. There is a pretence to homogeneity of experiences covered by the word sisterhood that does not in fact exist. (p. 116)

Saunders (2002) has also noted that unlike Western feminists who make gender equality the centre of their struggle, feminists in developing countries generally single out the satisfaction of basic needs as the most pressing issue. In such communities, women are likely to prioritise economic issues, since poverty and harsh economic conditions, much more than their sex, significantly shape their everyday experiences. This also partly explains why women's organisations in Africa tend to be welfare-oriented rather than empowerment-oriented (Mathangani, 1995) and why legal abortion is not a priority of many such organizations.

It is important to note that feminist bias towards middle-class women's experiences is also a reality in Africa, where feminist consciousness is identified with a few elite women (Aina, 1998; Mohanty, 1991; Nnaemeka, 2005). These women's activists, who ostensibly represent women's interests, have been noted to pursue policies that benefit their own class and/or ethnic groups (Staudt, 1984). Staudt argues that although women share commonalities in terms of their reproductive capacities, sexual division of labour, and the state conception of women, there are differences among women based on class and ethnicity, which not only often lead to differences in opportunities and lifestyles, but also narrow the political agendas of gender activists. Kenyan scholars have, for example, noted the marginalisation of rural and urban poor women's needs by an elite middle-class and city-based women's movement (Mathangani, 1995). As a result of poverty and also geographical isolation, rural and urban poor women are compelled to prioritise access to day-to-day needs such as food, clean water, shelter and so on, all of which are unlikely to be the concerns of urban middle-class women. The gender debate has therefore been dominated by issues of political representation and the introduction of quotas, which are likely to benefit educated middle-class women, rather than the more substantive issues of cultural subordination, access to productive resources, especially land, or women's rights to bodily integrity (Britton, 2005). Meintjes (2010, p. 4) clearly captures this in her observation that in Africa, "women politicians, who are members of an elite political class, are no more likely than men to champion women's rights, needs and interests."¹⁶ Indeed, it is possible that the issue of unsafe abortion has failed to attract sufficient support from women's organisations because the elite women associated with the organisations are often able to pay for safe services, which are readily available despite being illegal.

In addition to failing to consider important differences in degrees of power and access to the proposed liberties among different classes and ethnicities, liberal feminism's contribution becomes more limited in corrupt and undemocratic political contexts in which governments subordinate women in a myriad of ways,

¹⁶ There is a general feeling that although women's presence in governance has greatly improved in Africa, this has not altered pervasive patriarchal cultures and practices (Meintjes, 2010).

some related to gender factors and others related to the neo-patrimonial nature of African politics (Nzomo, 1997; Staudt, 1998). The liberal feminist belief that the state can be entrusted with securing women's rights in terms of the law also fails to take into account that some states, such as those found in developing countries, are not only illegitimate but have also been noted to uphold many gender discriminative laws, especially if abolishing them might threaten political stability and/or support bases (McFadden, 2002).¹⁷ It is unlikely for such states to be supportive of policies that legitimise controversial issues such as abortion, which have potential to upset important constituents such as traditional patriarchs and religious groups.

Liberal feminism's exclusive focus on integrating women into state institutions without challenging the deep structures of male dominance has two major consequences. Firstly, because of liberal feminism's focus on women's incorporation into public roles, it is likely to appeal to women who have the economic resources to better compete with men for desirable social positions and employment opportunities. Secondly, the failure to problematise the overall structure of the society has been noted to potentially produce a situation that perpetuates dominant patriarchal discourses and norms rather than challenging them (Pateman, 1988). As MacKinnon (1991) has rightly noted, the law itself can be a vehicle for gender discrimination, as it may create and maintain male dominance. One way through which this may happen is co-optation, whereby liberal states may just incorporate feminist terms into liberalism, without taking feminism seriously (Eisenstein, 1981). The cooptation of women's activists and women's movements by governments is common in Africa (see Chapter 5), wherein governments have set *politically correct* institutional mechanisms that are largely governed by women members of the political elite, whose feminist understanding is often limited. As a result, although women's representation in governance and more so in Parliament in Africa has improved, gender equity policies have been integrated into state patronage systems and therefore little meaningful change has been achieved (Meintjes, 2010). In fact, Tripp and Kang's

¹⁷ For example, the attempt by the Ugandan women's movement to have a Domestic Relations Bill passed by Parliament failed following major controversy over its contents (Tamale, 2008). The bill, which assured women equality in marriage, was shelved for 'more extensive consultations' after President Museveni, who was keen on winning a fifth term in office in the forthcoming 2006 general election, declared that the bill was not urgently needed. It was therefore shelved for more consultation (ibid.).

(2008) study of women's movements in Africa found that even non-democratic states like Ethiopia, Rwanda, Uganda and Zimbabwe have met demands for representation, gender equity and gender mainstreaming, but without significant improvement in women's status in society.

Lastly, liberal feminists' understanding of the state is rather narrow, focusing mainly on state institutions (Kantola, 2006). This leaves out other political players such as tribal and religious institutions, all of which play powerful roles in public life, especially on issues affecting human sexuality and gender relations. Thus, although liberal feminists have examined the gender discriminative character of the state, they have failed to understand the deeper complexities of the state, as well as its inherently patriarchal nature (Connell, 1994), and in the case of Africa, the state's neo-patrimonial nature. The state seems to have been severed from any human qualities and granted an almost mystical power, which is reflective of a general failure by liberal feminists to grasp the concept of power and the origins of the state, and the embeddedness of the state in other social institutions.

However, despite the weaknesses that I have identified, the liberal feminist focus on the importance of law reform and their insistence on gender equality are important for this research. These will be discussed, along with their specific application in this research, in a later section of this chapter.

2.1.2. Radical Feminism and the State

Unlike liberal feminism, which is based on traditional philosophical foundations, radical feminism is not only contemporary but also arose from women's experiences of sexual domination (Mooney, 2000). Because radical feminism is rooted in women's experiences, it has been considered by some to be the only true feminist theory. MacKinnon (1983) argues that:

Feminism has been widely thought to contain tendencies of liberal feminism, radical feminism, and socialist feminism. But just as socialist feminism has often amounted to marxism applied to women, liberal feminism has often amounted to liberalism applied to women. Radical feminism is feminism. (p. 639)

Radical feminists problematize the state with the claim that it is a guarantor of male dominance, which reproduces gender hierarchies through a variety of legal

and other mechanisms which allow for the control of women (Liddle, 1996). MacKinnon (1989) notes that:

The state is male in the feminist sense: the law sees and treats women the way men see and treat women. The liberal state coercively and authoritatively constitutes the social order in the interest of men as a gender – through its legitimating norms, forms, relations to society, and substantive policies. (p. 161-2)

Radical feminists see the patriarchal nature of the state as underpinning its tendency to uphold and ensure male control over women in both the private and public spheres of life (MacKinnon, 1989). Defined as the historically produced situations in gender relations where men's domination over women is institutionalized (Connell, 1994; MacKinnon, 1983), patriarchy consists of those institutions, behaviours, ideologies, and belief systems that maintain, justify and legitimate male gender privilege and power (Braam & Hessini, 2004). Because women's control by men is both intimate and bodily, radical feminists consider patriarchal domination to involve male appropriation of women's sexuality and bodies. From this perspective, women are in an inherently subordinate position because sexual oppression is constitutive of the very gender category, woman. As MacKinnon (1982, p.515) has asserted, "sexuality is to feminism what work is to Marxism: that which is most one's own, yet most taken away". Seemingly, every feminist issue revolves around sexuality. The centrality of women's productive and reproductive role in society is also noted by an African feminist, Tamale (2005), who suggests that sexuality lies at the heart of African women's oppression and that the patriarchal state has a vested interest in keeping a tight leash on women's bodies and/or their sexuality.

Radical feminists believe that an improvement in women's status would require a revolutionary order to replace the patriarchal one, as the state cannot be expected to liberate women (MacKinnon, 1989). Since all social institutions are construed as intertwined, it is virtually impossible to attack sexism in any meaningful way. The resultant impossibility of separating state power from male power therefore implies that legal changes as proposed by liberal feminists can only serve to perpetuate the basic conditions of patriarchy. Moreover, since women's oppression stems from male domination, neither capitalism, nor socialism, nor

any other male-dominated system, can solve the problem (Gruber, 2012). For radical feminists, the structure of male domination needs to be dismantled if women's liberation is to be achieved (Acker, 1989). They identify civil society, rather than the state, as the sphere in which women should concentrate their energies in order to challenge patriarchy. To ameliorate women's suffering, radical feminists work at local levels to develop both for-profit and not-for-profit institutions that are operated by women to serve other women, such as small businesses, day care facilities, counselling centres, and safe houses for women escaping domestic violence (Gruber, 2012).

In advocating for legalised abortion, radical feminists advance the view that because biology, especially women's reproductive role, is the source of their oppression, liberation cannot be guaranteed by the state but can only come about through a biological revolution in which women seize control over the means of reproduction (Firestone, 1970). This would lead to women's liberation by directly ending gender-based distinction, and indirectly abolishing patriarchy, on which male dominance is anchored (Weisberg, 1996). This is more so because radical feminists see reproduction under patriarchy as being characterised by many other forms of compulsion, as noted by Jaggar (1983):

Contemporary patriarchy deprives young women of adequate contraceptive information, and the contraceptives it does make available are inconvenient, unreliable, expensive and dangerous. Patriarchy limits abortions and often seeks to deny them entirely, but at the same time it subjects women to intense and unremitting pressure to engage in sexual relations. (p. 256-257)

Thus, radical feminist analysis of women's oppression seeks to uncover and dismantle relations of domination that are concealed and legitimised by patriarchy (Jaggar, 1983).

2.1.2.1. Critique of Radical Feminist Theorizations

Although radical feminism provides useful insights into gender and the state, the tendency to essentialize the state as monolithically patriarchal is problematic. By singling out the exploitative structure of patriarchy as the primary cause of women's oppression, radical feminists present a model in which the state is the

key source of patriarchal power, and power is reduced to men's power over women. However, neither the state nor masculinity can be said to have a single source or terrain of power (Barrett & Phillips, 1992; Kantola, 2006; Rupp, 2008).

Additionally, by not paying enough attention to the issue of class, radical feminism, like liberal feminism, seems to imply that all women share the same oppression and that states oppress women everywhere in the same way (Acker, 1989; Maharaj, 1995). This renders radical feminism somewhat insensitive to differences among women. In addition to its universalizing tendency, which has been strongly rejected by black and minority feminists in Western countries (Hooks, 1984), radical feminist theory does not represent the situation in communities where women are differentiated by factors such as religion, tribe and class. For example, as I will demonstrate in this study, unsafe abortion affects mainly poor women, since middle class women are often able to pay for safe yet illegal services.

At another level, radical feminists, by concentrating on patriarchal domination, have failed to take into account the issue of women as agents of patriarchal violence against women. As I will show in Chapter 4, where I discuss the politics of female circumcision, women are the major perpetrators of this female practice. Additionally, the concept of patriarchy has been criticised for being incapable of handling historical change (Walby, 1992). In discussing gender relations in Africa, for example, history is a very important aspect. Attention ought to be paid to the ways in which the intervention of the colonial period created a situation in which earlier relatively powerful positions held by women were eroded by the introduction of new power paradigms (Nnaemeka, 2005). Furthermore, it is widely acknowledged that the neo-patrimonial and patriarchal nature of states in Africa have colonial origin (Bratton & van de Walle, 1997).

Despite this criticism of radical feminism, the theory's conceptualization of the state as patriarchal does make an important contribution to this study. This will be discussed in a later section of this chapter.

2.1.3. Socialist Feminist Theorizations of the State

Unlike liberal feminists who construe the state in a positive manner, socialist feminists, drawing on Marxist and radical feminist theories,¹⁸ perceive state institutions as bodies with a dominant interest in exploiting women since, from their perspective, states function as instruments of patriarchy and the ruling class (Carnoy, 1984). Their analysis of the state as an agent of patriarchal and class power is based on a specific conception of class which arises from a political economy that excludes domestic production, and, consequently, much of women's work, from calculation (Haney, 2000; Watson, 1990). Women's subordination by the state is therefore presented as being driven by economic considerations, which are in significant ways related to the continuation of patriarchy and capitalist accumulation (Eisenstein, 1999; Walby, 1986). The state reproduces and maintains this primarily because it serves the interests of capital and the ruling class (McIntosh, 1978). An important aspect of socialist feminist analysis is its focus on the importance of economic factors in shaping the politics of the male-dominated state and powerful elites. Accordingly, socialist feminists advocate for structural change in societies in order to accommodate women's interests. They contend that women's liberation will be possible only when the liberal state is overthrown and its capitalist and patriarchal structure dismantled (Dietz, 1987).

Socialist feminists organizing for abortion rights believe that individual rights and individual choice are important, but they are not enough. Two American feminists – Gordon (1977) and Petchesky (1980) – who played key roles in the development of socialist feminist theory on reproductive control, have argued that feminist demands for reproductive freedom cannot be separated from the need for social and economic change, as the impediments to reproductive freedom are the structures of social and sexual relations existing under capitalism. Petchesky (1986, p.11), for example, maintains that biological reproduction, while natural, is also a social activity determined by changing material conditions and social relations of reproduction. For her:

¹⁸ Like Marxism, socialist feminism recognizes the oppressive structure of capitalist society and like radical feminism, socialist feminism recognizes the fundamental oppression of women in patriarchal society.

Women make their own reproductive choices, but they do not make them just as they please; they do not make them under conditions they create but under conditions and constraints they, as mere individuals, are powerless to change. (p.11)

This approach thus calls for a multi-issue movement for reproductive justice that should be organised around an understanding of women's need for personal reproductive control, but also of the need to challenge the social and sexual relations around which responsibilities for pregnancy and childcare are allocated (Hoggart, 2000). Since women are the most affected by pregnancy, it should follow that they should be the ones to decide about contraception, abortion and childbearing, and that social structures and relations facilitate the ability of women to make these decisions.

2.1.3.1. Critique of Socialist Feminism

It is notable that although socialist feminist criticism of capitalism provides a worthy challenge to the liberal assumption that representative government is the sole sanctuary for politics and the legitimate arbiter of social change (Dietz, 1998, p.385), it also has limitations. By over-emphasising the effectiveness with which the state reproduces the capitalist mode of production through women's dependence upon men within the family, it fails in explaining convincingly just why the state should need to reinforce masculine dominance and privilege (Pringle & Watson, 1998). Moreover, while socialist feminist analyses explain the points at which patriarchal female oppression and the capitalist mode of production converge, there are many aspects of female oppression, such as violence against women, which cannot be explained by such an emphasis (Bozzoli, 1983). Bozzoli also argues against the functionalist assumptions of socialist feminism. To her, the fact that female oppression is useful to capitalism does not mean it is a creation of capitalism, and implying that it is denies the history of patriarchal female oppression in non-capitalist societies.

Another obvious shortcoming of focusing on capitalism and patriarchy is that other aspects of women's oppression receive insufficient attention. Consequently, as for liberal feminism, little consideration is given to the roles that race or ethnicity play in determining not just class relations or gender relations, but also power relations within a state. For example, as a result of racism, the chief sites of

oppression for women are different. Thus, although socialist feminist, radical feminist, and liberal feminist analyses have identified the family as a major site of oppression, women of colour have often considered the family a site of solidarity and resistance (Bhavnani & Coulson, 1986; Eisenstein, 1994; Smith, 1983). Rather than wish to be liberated from *the home*, black women, who have often been required to work outside the home, may actually prefer an opportunity to stay at home (Barriteau, 2006; hooks, 1984). Socialist feminism has also been accused of failing to consider women's ability not only to resist, but actually to influence institutions of the state (van Acker, 1999).

Furthermore, the socialist feminist notion of the social welfare state, although laudable, is perhaps not realistic in the context of the Third World state. Firstly, it is unlikely that states in the developing world can afford to provide welfare services as envisioned by Western-based feminists. Secondly, in neo-patrimonial bureaucratic states such as those found in many Third World countries, even minimal programmes aimed at ensuring access to food and healthcare for the poorest sections of society are likely to be co-opted and misappropriated as part of a corrupt system of clientelism.¹⁹ In many African countries, for example, politicians mobilise support by promising to provide public goods and services such as roads, hospitals, schools, running water and sanitation that the electorate is in need of (Szeftel, 2000). The allocation of millions of dollars towards such services does not always translate into their actual delivery.

Despite these limitations, socialist feminists' recognition of the interrelationships between patriarchy and capitalism, and their insistence on the importance of improving women's lives in both economic and domestic spheres, are relevant to this study. These will be discussed after the following discussion of the post-structuralist feminist theorization of the state.

¹⁹ The Government of Kenya for instance introduced the Constituency Development Fund (CDF) in 2003 with the objective of combating poverty at the grassroots level through implementing community based projects (Kimenyi, 2005). However, research on the use of these funds reveals that the establishment of the CDF was merely to enable Members of Parliament, who manage the fund, to have direct access to state resources for their own benefit. In addition to the fund being used as a tool for political mobilisation, millions of dollars meant for poor people have been misappropriated (ibid.).

2.1.4. Post-structuralist Feminism and the State

Although liberal, socialist and radical feminists' views of the state remain relevant to date, they have been accused of presenting the state solely as an instrument of men and/or patriarchal interests and of negatively presenting women as a homogeneous group of powerless objects of state policy (Haney, 2000; Watson, 1990). These approaches are accused of presenting the state as a monolithic entity which lies almost outside of society, rather than being something which is embodied in diverse institutions and in the context of interactions with different groups (Watson, 1990). When coupled with the fact that most of these feminist analyses have focused on states in the First World while comparatively little attention has been paid to a gendered analysis of the post-colonial and Third World states (Rai & Lievesley, 1996), the weaknesses of these perspectives become more apparent.

It is these weaknesses in the traditional feminist theorizations of the state that post-structuralist feminists have sought to address. One of the most significant contributions of post-structuralist feminist theorizations is the acknowledgement that the state is not a monolithic entity with unitary influences. Rather, it is a convergence of institutions that have their own histories, contradictions, relations and connections, internally and externally (Rhode, 1994). From a post-structuralist perspective, the state is categorised as being multifaceted in nature and consisting of a plurality of forces (Franzway et al., 1989; Waylen, 1998), whose different organs may have varying interests in issues, including sexuality and abortion. In this theorization, the state is presented as a "process rather than...a thing" (Connell, 1990, p. 509) and as a "network of power relations existing in co-operation and also in tension" (Rai, 1996, p. 5). In Connell's view, because the state is not unitary, neither are the practices that connect the various capillaries of the state body (Connell, 1990).

This view of power as dispersed opens up space for the recognition of multiple levels of governance in relation to the state so that power relations can be seen as extending beyond the limits of the state. In studying the politics of abortion for instance, focus can therefore be extended to actors outside of the state, such as women's organizations and religious groups, since in post-structuralist analyses,

the state is not the primary source of power. Rather, power is conceived as a constantly shifting set of force relations that emerge from every social interaction (Foucault, 1978). As Foucault puts it, “power is everywhere, not because it embraces everything, but because it comes from everywhere” (1978, p. 93). Because power is construed as being relational, productive, dispersed, and something to be exercised rather than possessed, it implies that any group or individual in a society can potentially wield power, and therefore be in a position to influence the state.

Furthermore, feminist post-structuralist theorization shifts from analysing the state as sexist to seeing the state as gendered (Kantola, 2007). In this case, gender is not considered a variable, but an analytical category that conceives of gender as a social construct (ibid.). The focus thus shifts from concentrating on women’s exclusion from state institutions to understanding the gendered structures of these institutions (Pettman, 1996). This makes it important to study the complex relations between gender and the state, as well as the processes that continue to reproduce gender hierarchies in states.

Post-structuralist feminist theorizations of the state, like the earlier discussed theories, contain elements that are relevant to a discussion of the politics of abortion in Kenya. Their view of the state as multifaceted is especially important. This will be discussed in detail in the section that follows.

2.2. Contribution of Western Feminist Theories of the State to the Present Study

Having provided an in-depth analysis of Western feminist theorizations of the state, their critiques, and also their arguments in support of legalized abortion, in this section I focus on the elements of each of these theories that are applicable to this study. After establishing their applicability, I provide a discussion of neo-patrimonialism, with the aim of demonstrating its importance as an additional concept in understanding the African state.

Two aspects of liberal feminism are relevant to this study. First, the liberal feminist focus on law reform is important, as this research demonstrates the importance of decriminalisation of abortion in Kenya. Although some researchers

have argued that the law is not transformative, does not affect or cause social change, and has only a limited capacity to advance progressive notions of justice (Menon, 2004), others have argued that the law can influence social policy and rights and has the potential to further progressive causes (Rosenberg, 1996). For example, legal and/or constitutional provisions provide a legal basis and legitimacy for women's rights advocacy, help prevent policy reversal, and increase the likelihood of favourable decisions in the courts (Scribner & Lambert, 2010). As such, a law decriminalising abortion would certainly boost Kenyan women's quest for safe abortions. As Meintjes (2010, p. 4) has added, without *paper rights*, women's freedom of choice in marriage, rights to bodily integrity, as well as substantive rights to inheritance, to land, and to social grants, would be impossible to claim.

Secondly, liberal feminism's insistence on gender equality in the public sphere of life is equally important for this research. As will become clear later in this study, women's exclusion from governance has enabled the male elite to sustain a largely patriarchal state in which issues affecting women are ignored. Additionally, poverty amongst Kenyan women is a result of their exclusion from productive resources, such as land and the labour market. Furthermore, in Kenya, income shortfalls induce women and girls into engaging in transactional sex, which exposes them to unwanted pregnancies, and simultaneously forces poor women to seek unsafe abortions since they cannot afford to pay for safe services (Robinson & Yeh, 2011).

In relation to radical feminist theory, their view of the state as patriarchal is particularly useful in this study because patriarchal power can be identified as lying at the core of understanding abortion as a contested and political issue. Since men are viewed as the norm in patriarchal societies, their life experiences and approaches are most often used as the basis on which to determine social needs, articulate policy requirements, and assign resources. The result of such a male-defined and dominated world view is that experiences that are not directly informed by men's experiences, including unwanted pregnancies and abortion, are not considered priority areas in comparison to traditional development priorities such as unemployment and poverty (Braam & Hessini, 2004). As I will demonstrate, in Kenya, political leaders can be seen to deliberately ignore

abortion because it is considered a volatile issue that could compromise electoral support from key constituencies such as religious groups and traditionalists.

Socialist feminist theorisation of the state also makes a significant contribution to this study. Drawing on socialist feminism's critique of patriarchy and capitalism, as well as its emphasis on economic justice, I will demonstrate how both the colonial and post-colonial Kenyan states have been instrumental in sustaining women's subordination for the benefit of the state, the male ruling elite, and capitalism. For example, the colonial government in Kenya criminalised abortion in an attempt to curb the unnecessary loss of labour, and attempted to ban female circumcision to appease European settler farmers who felt circumcision affected labour availability by contributing to maternal mortality (Thomas, 2003). The colonial state also reinforced pre-existing patriarchal power through the depoliticization of gender issues by pushing them into the private sphere, with the aim of creating conditions necessary for the capitalist transformation of pre-colonial African communities. In order to foster and enable men's participation in a cash economy, the colonial state found it necessary to relegate women to the *private* sphere where women were expected to provide the necessities of productive and reproductive social life, become economically dependent on men, and articulate consumer demands to stimulate the economy (Staudt, 1984; Tamale, 2005). Although the separation between the public and private spheres may have preceded colonisation, the colonial state consolidated and reinforced it through its legal, religious and educational policies and practices (Tamale, 2005).

Unfortunately, post-colonial African states adopted the colonial system so that women's exclusion from the public sphere and more so productive resources continues to date. It is possible that the relegation of gender issues to the private realm, and their consequent depoliticization, may be behind the lack of attention given to the issue of unsafe abortion, even though it causes death and health complications for thousands of Kenyan women. The same could be said of female circumcision, which was not criminalised until 2001,²⁰ more than three decades after Kenya gained independence.

²⁰ This followed the adoption of the Children's Act 8 of 2001. Under Section 20 of the Act, those found responsible for subjecting a child to "female circumcision" are liable to a term of imprisonment not exceeding twelve months, or to a fine not exceeding fifty thousand shillings, or

The relevance of a feminist post-structuralist analysis of the state for this study lies in the view of the state as fragmented, consisting of a set of arenas that are not necessarily coherent (Pringle & Watson, 1992). This analysis makes it possible to see the Kenyan state as a differentiated set of institutions, agencies and discourses, where various actors in the abortion debate fight their battles. In the state arena, anti-abortion actors have the opportunity to use a variety of strategies and discourses to construct their interests, and pro-abortion actors can use various strategies and counter-strategies to advance their goals. Moreover, the depiction of the state as a discursive process provides insight into the fact that the state is not inherently patriarchal, as radical feminists would argue. Rather, the state has been historically constructed as patriarchal in political discursive and structural processes, such as colonialism and neo-patrimonialism (Connell, 1987). As such, the Kenyan state can be approached, not as the manifestation of a patriarchal essence, but as the centre of a reverberating set of power relations and political processes in which women's subordination is both constructed and contested (ibid.).

Further, the feminist post-structuralist representation of women as a heterogeneous group, and the emphasis on gender diversity and women's multiple identities (Pringle & Watson, 1992) mirrors the situation in Kenya.²¹ As will become clear in Chapter 7, women who can afford to pay are usually able to receive safe but illegal abortions. Additionally, feminist post-structuralist recognition of the ways in which women's bodies and sexuality may be regulated and/or disciplined for the benefit of those in power is particularly important. As I demonstrate in this study, both the colonial and post-colonial Kenyan states have enacted gender discriminative laws when seeking political support from conservative religious and traditional groupings.

In this section, I have identified and discussed the aspects of liberal, socialist, radical and post-structuralist feminist theories of the state that are applicable to

to both such imprisonment and fine.

http://www.chr.up.ac.za/undp/domestic/docs/legislation_03.pdf.

²¹ It is worth noting that this notion of plurality of the subject has been challenged within feminism by theorists such as Hartsock (1998) who argue that endless division of the subject eliminates the possibility of meaningful political action. She contends that a focus on multiple subjectivities can divert attention from sustained axes of domination.

this study. However, because of their inherent weaknesses and the fact that they fail to acknowledge neo-patrimonialism, which, according to Bratton and van de Walle (1997, p. 3), is “the core feature of post-colonial politics in Africa”, they cannot sufficiently explain the Kenyan state’s inability and/or unwillingness to address unsafe abortion.²² Therefore, in the following section, I provide a discussion of neo-patrimonialism, which I suggest, feminist analysis of the state ought to consider in order to fully appreciate the nature and actions of African states.

2.3. The Nature of Post-colonial African States: Neo-patrimonialism

The concept of neo-patrimonialism²³ has been noted to mean different things to different scholars (Erdmann & Engel, 2007). Bratton and van de Walle (1997), for example, understand it to be a hybrid regime consisting of, on the one hand, an exterior modern, formal, rational-legal state-like apparatus, and on the other hand, a patrimonial spoils network in which centralised elites mobilise political support by using their public position to distribute jobs, rent-seeking opportunities, and resources as personal favours. Clapham (1985, p. 48) says a neo-patrimonial state is “a form of organisation in which relationships of a broadly patrimonial type pervade a political and administrative system which is formally constructed on rational-legal grounds”. Somewhat differently, Chabal and Daloz (1999, p.16) describe the modern African state as “no more than a décor, a pseudo-western façade masking the realities of deeply personalised political relations.” What is in agreement in these definitions is that in African neo-patrimonial states, political

²² I am however aware that the concept of neo-patrimonialism has received criticism from a significant some scholars (de Sardan, 2009; Mustapha, 2002; Smith, 2006) who have argued that it is racist and that it reduces the complexity and diversity of African states to single concepts. It is however notable that they do not discount the existence of patrimonial and related practices such as corruption and clientelism in African states. Olivier de Sardan (2008, p. 6) has for example noted that although patronage and clientelism undoubtedly exist in contemporary African states “the truth is that the multiple divergences between norms and practices ... cannot be subsumed so quickly under a single concept. The forms and modalities must first be explored and the nuances and variants identified.”

²³ Social scientists add the modifier neo- to patrimonialism to distinguish what they regard as a modern variant of Weber’s (1947) ideal type with one in which patrimonial logic characterized by patronage, clientelism, and corruption prevails (Pitcher et al. 2009).

power is personal and politics is a type of business wherein political positions give access to economic benefits (Bach & Gazibo, 2012; Fatton, 1990).²⁴

Some researchers have located the origin of neo-patrimonialism in the colonial experience (Berry, 2000; Dia, 1996; Lentz, 1995; Mamdani, 1996; Pitcher et al., 2009).²⁵ These scholars argue that the colonial era exerted so much influence on states and societies in Africa that contemporary governance in the continent bears little resemblance to that of the pre-colonial societies. Englebert (1997, p. 768) has for example claimed that the contemporary problems in African states derive “from the very exogeneity of the state, its lack of embeddedness, its divorce from underlying norms and networks of social organisation.” For him, the different values of the imported colonial state gave rise to a perception of illegitimacy in the minds of the colonised people, and consequently the belief that it was available for plunder (Englebert, 1997). As Achembe (1960, p. 30) observes, local people came to view the state as “an alien institution and people’s business was to get as much from it as they could without getting caught.”

It is noted that soon after the Berlin Conference of 1884-1885,²⁶ European colonialists partitioned Africa amongst themselves in a manner that reflected their spheres of influence, without paying regard to matters concerning ethnic heterogeneity or hitherto existing institutions of governance (Mamdani, 1996). Upon Independence, the artificial boundaries were maintained so that different ethnic groups, each with their own languages, culture, religion, traditions, customs and political and economic systems, were brought together to form single political and administrative units (Dowden, 2008). Forcing ethnic communities that previously lived independently of each other to live together, the colonisers did

²⁴ Some researchers, such as Erdman and Engel (2007), have noted that significant elements of patrimonialism survive and thrive even in the most highly industrialized present societies.

²⁵ It should be noted that some scholars have located the origin of neo-patrimonialism in pre-colonial patterns of behaviour in which patrimonial considerations are presented as having been paramount (Chabal & Daloz, 1999; Ekpo, 1979). Some other researchers also see the reality of contemporary Africa as being the product of both pre-colonial and colonial practices (Dia, 1996; Kohli, 2004).

²⁶ The Berlin Conference was held in Berlin between November 15, 1884 and November 26, 1885 for the purpose of dividing the continent of Africa between European powers (Dowden, 2008).

not give a thought to the possibility of the emerging states being ethnically and/or otherwise polarised.

The European idea of a monocultural nation-state left most post-colonial African states with the dilemma of how to unite ethnically and sometimes religiously plural societies (Chatterjee, 1993; Dia, 1996). Moreover, the numerous tribal patrimonial kingdoms encouraged by the colonialists' system of indirect rule²⁷ had led to the emergence of extremely powerful individual local intermediaries²⁸ who acted to limit the post-colonial state's infrastructural power (Bayart, 1993). In a bid to homogenise the otherwise heterogeneous groups, African leaders sought to centralize both the state and power, leading to the emergence of neo-patrimonial states.

Researchers have argued that because diverse pre-existing institutions were disrupted or constituted by colonialism, they could not generate loyalty and ownership among Africans. To compensate for the low or weak initial political legitimacy, post-colonial African leaders adopted neo-patrimonial and clientelistic strategies which temporarily afforded them the necessary "instrumental loyalty" of competing elites (Dia, 1996; Englebert, 2000). As Chabal (2002) observes:

Politics at independence became patrimonial rather than institutionalised.... Despite their Western appearance, African political systems developed a logic of patronage which relied almost entirely on networks of personalised and vertical relations between rulers and ruled, elite and populace. (p. 51)

Evidently, at its core, neo-patrimonial rule is governance based on assembling political supporters through patronage rather than issues. Although policies remain important, they are chosen on the basis of assembling clients rather than on appealing to citizen preferences. This is in opposition to the Western-type state system wherein the bureaucratic elite is, in principle, the servant of elected government, which makes decisions for the good of the nation-state (Parkin, 2002). The bureaucratic system is largely rigidly hierarchical, and "everything

²⁷ As a result of scarcity of money and manpower, British colonialists ruled through local tribal leaders, particularly chiefs, to implement colonial policies (Berry, 1992; Jua, 1995).

²⁸ Mamdani (1996) has noted that indirect rule resulted in decentralized despotism, in which local chiefs were granted increased power with often weakened downward accountability.

depends only on formal regulations and the specific orders of superiors” (Mommensen, 1989, p.113). This system, when compared to neo-patrimonialism, is considered preferable due to the fact that the bureaucracy is expected to work towards goals that are publicly accepted (Clapham, 1985).

Bratton and van de Walle (1997) have identified three major features of neo-patrimonialism in Africa. They include: (a) presidentialism or personalist power concentration, (b) systematic clientelism, and (c) the use of state resources. Presidentialism refers to the systematic concentration of political power in the hands of one individual, who resists delegating all but the most trivial decision-making tasks (ibid). This phenomenon, often referred to as the *big* or *strong* man syndrome (Medard, 1982; Sandbrook, 1985), usually involves a charismatic leader who uses this to legitimise his authority and also to succeed in the *winner-takes-all* competition that characterises elections in African states. Usually symbolically marked as the nation’s father, the *big man* is relatively unfettered by modern accountability institutions, and hence is able to use all available political tools such as informality, personalism, particularism, patronage and exchange, elite bargains, and shifting allegiances to retain power and legitimacy (ibid.). To accumulate power, leaders often ensure that all political power is centralised in the executive (Van Wyk, 2007). In Nigeria, for example, the personalised nature of the political arena can be seen in the domination of a powerful *godfather* at the apex of a vast patronage network at federal, state, and local levels. As a result, all political outcomes are the function of intense competition between these godfathers, often at the expense of the population (Sklar et al., 2006).

The second feature of neo-patrimonialism, clientelism, implies the award of personal favours to secure loyalty and support (Van Wyk, 2007). Clientelism, also described as the operating code for neo-patrimonialism, secures power for the ruling regime through the distribution of benefits and resources to those whose loyalty maintains the position of the elite (Harland, 2011). Clientelistic networks radiate out from the centre, usually from a President and his close associates, through smaller decentralised networks, franchised in return for loyalty to the centre (ibid.). Finally, the third feature of neo-patrimonialism, which involves the use of state resources for political legitimation, has been strongly associated with

corruption, nepotism and rent-seeking behaviour (Bratton & van de Walle, 1997). It is important to note that these three traits do not exist individually but rather are interconnected, so that clientelism and corruption are often the outcome of a strong concentration of political power at the top of the political system.

Gibson and Hoffman (2002) observe that the basic structure of neo-patrimonial regimes consists of three sectors: the *ins*, the *outs*, and the government. In this arrangement, the government derives its support by providing patronage to the ‘ins’ (clients, cronies) and funds this by taxing the *outs*, among them women.²⁹ This is usually simple because the ruler normally has control of an enormous amount of resources and is often a paramount patron with wide control over bureaucratic appointments, which are used not just as incentives for loyalty, but also to ensure incumbency (Clapham, 1982; van de Walle, 2001). According to Bratton and van de Walle (1997):

The right to rule in neo-patrimonial regimes is ascribed to a person rather than an office, despite the official existence of a written constitution. One individual, often the President for life, dominates the state apparatus and stands above its laws. Relationships of loyalty and dependence pervade a formal political and administrative system, and officials occupy bureaucratic positions less to perform public service, their ostensible purpose, than to acquire personal wealth and status. (p. 62)

A major consequence of neo-patrimonialism is the hindering of development and economic growth for citizens, but more so for the poor and marginalised (Englebert, 2000). The use of state resources to reward supporters for their loyalty and the repeated appropriation of state funds by leaders and their followers for their personal enrichment undermines systems of public accountability and creates conditions where corruption and rent-seeking behaviour flourish (Pitcher et al., 2009). It is therefore not surprising that human development and economic development in Africa remain amongst the lowest in the world (Fosu, 2010).

Instability of government institutions has also been identified as an inherent feature and consequence of neo-patrimonial rule. Rulers regularly rotate officeholders “to regulate and control rent seeking, to prevent rivals from

²⁹ It is important to note that some women can become part of the *ins* by association with the ruling political elite.

developing their own power base, and to demonstrate their own power” (Bratton & van de Walle, 1994, p. 463). One consequence of the resultant instability arising from constant reshuffling and replacement of state officers is weak performance of state workers. Furthermore, clientelistic networks and patronage-based distribution systems are known to undermine state consolidation, since their opaque and corrupt practices normally compromise formal state institutions (Thompson, 2009). This may damage the long term culture of democracy in a country, as ineffective and corrupt public institutions erode or destroy public confidence in these institutions. The resultant erosion of state institutional efficiency and regime legitimacy depresses the state’s administrative capacities as well as its ability to shape the society’s socioeconomic advancement. As Jackson and Rosberg (1982) observe:

A political system of personal rule is not a system which responds to public demands and support by means of public policies and actions, nor is it a system in which the ruler aims at policy goals and “steers” the governmental apparatus by information “feedback” and “learning”. Indeed, the concept of governance as an activity of guiding the ship of state toward a specific destination - the assumption of modern rationalism and the policy sciences - fits poorly with much political experience in contemporary Black African countries. (p. 18)

Unfortunately, unlike in democratic societies where constituents technically have the option of voting out incompetent leaders, elections in Africa do not provide an effective accountability mechanism. Because neo-patrimonial systems concentrate power in the hands of wealthy and powerful individuals, they not only purposefully weaken political opposition but also use state resources and at times violence to ensure re-election. It should not escape notice that African political leaders are not only, on average, older than leaders elsewhere in the world, but also rule for longer. President Mugabe of Zimbabwe is 86 years old and has ruled the country since 1987. At the time of his death in 2010, Muammar Al-Qaddafi of Libya was aged 69 and had been leader of the country for 41 years, while Uganda’s Yoweri Museveni has been in power for 26 years.

The above discussion has demonstrated the importance of neo-patrimonialism in any analysis of African states. In the section that follows, I examine the gendered nature of neo-patrimonialism with the aim of showing why the concept is

fundamental to an adequate feminist analysis of the Kenyan state's inability and/or unwillingness to conclusively deal with the issue of abortion. I propose a framework, the Critical African Feminist Perspective (see figure 1), in which I incorporate and integrate the concept of neo-patrimonialism, with the earlier identified aspects of liberal, radical, socialist and post-structuralist feminist theories.

2.4. Roadmap to a Critical African Feminist Theorization of the African State

Without going into the details of the gendered effects of neo-patrimonialism here (these are addressed in Chapter 5), it is important to note that although discussion and application of the concept of neo-patrimonialism in African politics began in the 1970s (Lemarchand, 1972), scholars have been slow to examine the relationship between gender and neo-patrimonial politics. With the exception of Tripp (2001), I found no evidence of any other research on the gendered effects of neo-patrimonialism in Africa.³⁰ Pitcher et al. (2009) have also noted that scholarship on neo-patrimonialism in the developing world has in large part overlooked patriarchalism by focusing almost exclusively on clientelism in the politics of contemporary regimes. However, patriarchalism, a significant aspect of patrimonialism, can be argued to be a major contributor towards gender discrimination in neo-patrimonial African states. In fact, Weber (1978, p.1011) describes patrimonialism as a “special case of patriarchal domination”, while Adams (2005, p.7) makes reference to “patriarchal patrimonialism” in recognition of the significance of patriarchalism, defined as including a combination of male dominance, extension of family symbols to politics, collectively useful marriage alliances, and expectations of reciprocal obligations, for understanding the nature of neo-patrimonial politics in Africa.

The importance of focusing on the fundamental features of family and kinship networks in discussions of the African state has been recognised by various scholars (Chabal, 2009; Meintjes, 2010; Schatzberg, 1993; Tripp, 2001). Schatzberg (1993) has, for example, noted that the “moral matrix”, or cultural

³⁰ Tripp's (2001) focus is on women's organizations in Uganda that have resisted cooptation by the state. This is contrary to the implications of neo-patrimonialism that I explore in this study.

dispositions in Africa, which rely on the imagery of political leaders as fathers and providers for the family/nation, are derived from an idealised vision of authority and behaviour within the family and are often discriminatory towards women. In addition to characterizing all citizens as dependents for whom the father is responsible, familial metaphors that present states and families as similar also emphasize the power of husbands over their wives. Schatzberg (2001, p.149-168) argues that the African political father is expected to provide for, nurture, and care for his political children. He should ensure that among other necessities, the national family has enough to eat; he must love the children, and maintain paternal discipline; exercise pardon and absolutism; consult and listen to the voices of the wives and their adult children. In return, the father appropriates the rights to “receive respect and gratitude”, to exercise “punishment and pardon”, to “eat” and even “eat well”, and “to control and consume both people and resources” (ibid.). In this context, equality for women and children is very unlikely, especially when considered alongside the fact that the African elite also conceive power as indivisible. Furthermore, African men have been noted to identify themselves as owners of women’s bodies, and thus as having the right to control their sexuality (Jewkes & Morrel, 2010).

It should, however, be noted that although patriarchal control over women is justified with reference to tradition, it is not the case that traditional practices affirmed patriarchal power. Although older males tended to have more political authority and access to productive resources than women in pre-colonial African societies, women had considerable autonomy that helped dilute tendencies towards male dominance (Robertson & Berger, 1986). In some communities, women had parallel authority structures to those of men, and these enabled women to have control over their own spheres of activity. This was further enhanced by the fact that husbands and wives did not usually pool resources, thereby according women a significant amount of economic independence and control over productive assets (Gordon, 1995). The introduction of colonialism and a capitalist mode of production (as noted by socialist feminists) transformed these gender relations by, for example, imposing cash crop production and waged labour, both of which favoured men as a group (Stichter, 1982). The resultant patriarchal dominance, which saw men gain control over kinship systems, households and property ownership, seems to have survived the colonial period

and continued into the post-colonial period. Notably though, some researchers have claimed that African patriarchy is not so much a consequence of men's intention to oppress women; rather, most men have attempted to control women in an effort to maximize their own opportunities for survival in the context of widespread poverty. Langley (1983), for example, argues that:

It is not the elder brothers, the husbands, the uncles or fathers who exploit women, but those social forces which dominate the economic system which encourage pre-existing inequalities and domination and use them to ensure reproduction of the labour force at the lowest possible cost (as cited in Gordon, 1996, p. 31).

As would have been expected by radical feminists, the African state and ruling elite have failed to intervene because they too benefit from patriarchy. Obbo (1980) has noted that because Africa's elite depend heavily on the patriarchal family production system to generate the surplus that they expropriate for their own power and riches, they have not shied away from using state institutions to support and sustain African patriarchy. For example, although a majority of African states have put in place legal frameworks for women's equal rights to land, structural, cultural and economic constraints continue to limit women's access to and control over land (Harrington & Chopra, 2010). As Tripp et al. (2009) explain, equity legislation, which focuses on access, has been easier to introduce into male dominated Parliaments because it does not challenge gender roles per se. This is unlike issues of women's rights, such as the right to equal treatment, to inheritance and to bodily integrity, which have been resisted since they are seen to pose a threat to what are conceived as *proper* and *naturally constituted* gender roles and power relations. As a result of neo-patrimonial politics, the mainly male political elite have been unwilling to enforce and campaign for women's rights for fear of losing support from men in general and traditional and religious groups in particular.

An obvious consequence of male dominance in social, economic and political life is the exclusion of women from the same, as claimed by liberal and socialist feminists. For example, besides Rwanda, which boasts of more than 50 per cent female representation in Parliament, followed by South Africa with 46 per cent, many countries in the continent lag far behind (Devlin & Elgie, 2008). The Sub-

Saharan region is noted to have a female Parliamentary representation of about 20 per cent (Yoon, 2011). Although research into the benefits of increased women's presence in Parliament is inconclusive, some studies have shown that female political leaders not only bring to politics their own perspectives, experiences, and expertise, but are also more likely than men to prioritize women-favourable legislation regarding education, health, child care, and violence against women (Stockemer, 2011; Tripp & Kang, 2008).

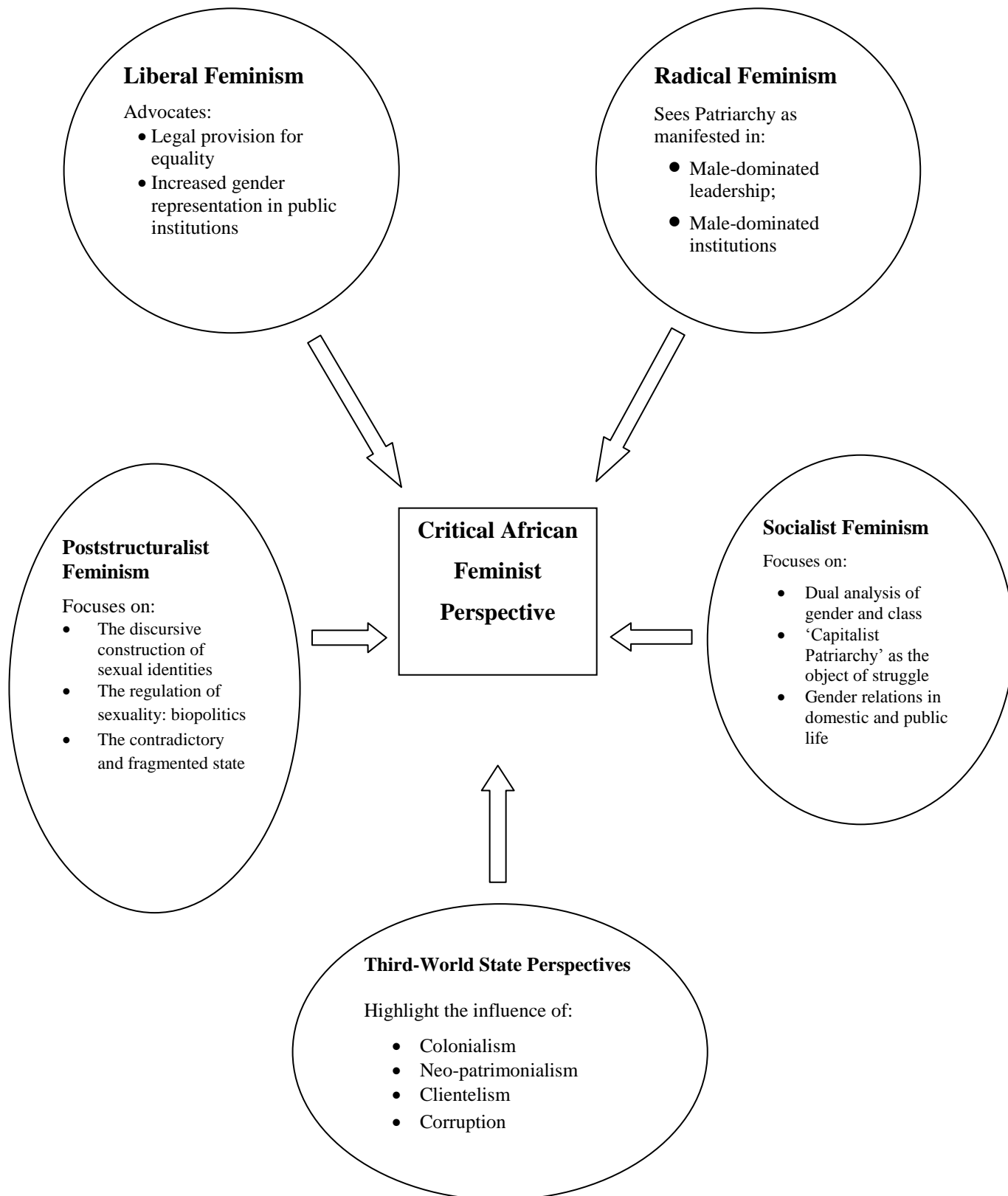
Tripp (2003) contends that one way of addressing women's marginalization in governance is through quota provisions. Unfortunately, although quotas have increased female representation in a number of African countries, including Rwanda, Mozambique and South Africa, the same cannot be said of the majority of countries in the continent. A major reason is the nature of politics and more specifically the patriarchalism and neo-patrimonialism of African politics. For example, since political parties in neo-patrimonial states such as Nigeria and Angola are organized on the basis of personal connections and often also lack transparent rules of candidate selection (Randall & Svasand, 2002), women are unlikely to be nominated as candidates because they are usually excluded from the generally male-dominated clientelistic networks that control elections. Incidentally, although access to power is contingent upon women becoming patrons or clients in the male-dominated patronage networks (Goetz, 2003), they are at the same time excluded from these corrupt networks based on tradition and culture. Thus, when considered alongside the fact that African women often lack financial resources to run a campaign or to buy themselves into political networks, the reasons for ongoing underrepresentation of women in African parliaments become clear.

Feminist scholars have hypothesized that women's movements may help women enter into politics (Ballington & Matland, 2004; Tripp, 2001) by exerting pressure on politicians to increase the number of women in positions of political power, and providing a support base for female candidates. The success of the African women's movements has, however, been constrained by authoritarian neo-patrimonial governments that often co-opt them or their leaders into state feminism. This often happens through the creation of state-run organisations, more often than not women's wings of ruling political parties (Geisler, 2004). The

co-optation into state-linked patronage not only ensures state control of the women's agenda, but also reduces their political role to that of dancing for the President and his supporters at political rallies (Geisler, 2004). Additionally, the co-optation also refocuses women's mobilization from supposedly political issues to a narrow set of issues which at times result in a focus on women's morality. In some instances, African states have responded to international pressure by setting up *politically correct* institutional mechanisms that have largely been placed under the control of handmaidens of the ruling elite, whose feminist understanding is often limited (Meintjes, 2010). In cases where the women's movement has survived, interaction with the state has led to the replacement of radicalism with the idea that the movement could make strategic gains by prioritizing *winnable* demands from the state, while ignoring more contentious issues (ibid.). As a result, issues such as political representation have received significant attention but at the expense of issues such as cultural subordination, human sexuality, abortion, and reproductive health (Britton, 2005).

The above discussion demonstrates the importance of neo-patrimonialism in the analysis of the African states in general and the Kenyan state in particular. The diagram below captures the manner in which the relevant aspects of Western feminist theories of the state, and the concept of neo-patrimonialism, were used in the construction of the Critical African Feminist Perspective. This framework provided the lens through which I sought to examine and account for the Kenyan state's treatment of the issue of abortion.

Figure 1: Critical African Feminist Perspective



The table below provides a summary of the questions that guided my use of the Critical African Feminist Perspective in this study. Specifically, the table details the kinds of questions that guided my data analysis (see Chapter 3).

Table 1: Questions for a Critical African Feminist Analytical Framework

Theory	Relevant Questions
Liberal feminism	<ul style="list-style-type: none"> • In what ways do Kenyan laws, both in the colonial and post-colonial state, foster or hinder the full and equal participation of women in political, civil, economic, social and cultural life?
Radical feminism	<ul style="list-style-type: none"> • How does patriarchy, both nominal and substantive, in Kenya's political institutional structures influence abortion politics?
Socialist feminism	<ul style="list-style-type: none"> • What are the ways in which class plays a part in the sexual politics of the state? • How is abortion politics a manifestation of capitalist and male interests in colonial and post-colonial Kenya?
Post-structuralist feminism	<ul style="list-style-type: none"> • What does the ambivalence in the state's actions around abortion indicate about the contradictory, non-unitary state? • What are the ways in which abortion – and those who seek it – is constructed by the various state and non-state actors? • How do current laws on abortion regulate women's sexual identities?

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- What is the impact of neo-patrimonialism on the Kenyan state's handling of gender issues in colonial and postcolonial times?
- How do patronage and clientelism influence the state's gender regime?

2.5. Conclusion

This chapter aimed to identify and develop appropriate theoretical and conceptual tools for analysing and understanding the Kenyan state's treatment of the unsafe abortion question. An analysis of the state is important because both anti- and pro-abortion actors appeal to the state in their attempts to institutionalize their positions. A review of the existing Western feminist approaches to the state showed that none is sufficient on its own. I therefore have proposed Critical African Feminist Perspective, which takes into consideration the importance of neo-patrimonialism in understanding the African state in general and the Kenyan state's treatment of the abortion question in particular. I note that, in addition to patriarchy, liberalism and capitalism, neo-patrimonial politics also impede African and Kenyan women's ability to access justice. These concepts, alongside the others identified Figure 1, guided this study. In the next chapter, I provide a detailed account of this study's research design, including methods of data collection and analysis.

Chapter Three

Research Methodology

3.0. Introduction

Although Kenyan women's reproductive capacity has for a long time been a political battleground for wars of colonialism, religious faith, Africanness, constitutional rights, human rights and dignity, little scholarly attention has been directed at the political and social implications of state regulation of women's bodies, and specifically of women's access to abortion. Indeed, as noted in Chapter 1, the focus of most studies on abortion includes rates of incidence, the socio-demographic characteristics of women who abort, measures of risk, morbidity and mortality, correlation with contraceptive use and family planning, post-abortion care, and teenage pregnancies and abortion. This is mainly because most of the studies apply quantitative surveys and structured questionnaires, which fail to reveal the political, cultural, social and policy contexts critical to making sense of women's experiences of abortion. In order to address the gap in the scholarly literature on the state and sexual politics in Kenya, this study is intended to unearth why unsafe abortion, which kills and maims thousands of women every year, remains largely unaddressed by the Kenyan state. Specifically, the study seeks to understand how the Kenyan state influences abortion politics through its policies and practices.

In this chapter, I discuss the procedures and methods used to carry out my research. In the first section, I make a case for feminist qualitative research methodology and thereafter examine the importance of discourse analysis as a method of research in this study. The remaining sections provide details of the procedures used in identifying my research participants as sources of primary data, and how I chose my secondary data material. I also provide details of my data analysis process.

3.1. Feminist Qualitative Research

As earlier noted, a feminist qualitative approach was considered suitable for this study. The question as to whether there is a feminist method has been debate for a long time, and although there is no definite answer (Harding, 1987), the general consensus of feminist scholars is that feminist research should be not just on women, but for women and, where possible, with women (Fonow & Cook, 1991; Ramazanoglu & Holland, 2002). Additionally, feminist research is expected to adopt critical perspectives toward dominant intellectual traditions that have in the past ignored and/or justified women's oppression (Acker et al., 1983). Furthermore, feminist research is seen as being concerned with issues of broader social change and social justice and committed to changing the condition of women (Acker et al., 1983; Fonow & Cook, 2005). In fact, according to Ramazanoglu and Holland (2002, pp. 2-3), "feminist research is imbued with particular theoretical, political and ethical concerns that make these varied approaches to social research distinctive." This study is thus feminist, as it has the political goal of transforming Kenyan women's experiences of abortion through an analysis of how the actions and/or inaction of the state and non-state actors impact on their lives. A second reason for situating my study as feminist has to do with the fact that abortion, the main subject of this study, is a feminist issue (Sherwin, 1991). Like most feminists, including myself, Sherwin argues that the decision to abort should be left to the pregnant woman, since she best understands her situation (*ibid.*).

Qualitative research has been described as a form of social inquiry that focuses on the way people interpret and make sense of their experiences and the world in which they live (Holloway, 1997). It refers to a study process that investigates a problem where the researcher conducts the study in a natural setting and builds a complex analysis by way of rich description and explanation, as well as a careful examination of data (Creswell, 1998). Although there are different approaches within the wider framework of qualitative research,³¹ most of these have the same aim of understanding the social reality of individuals, groups and cultures.

³¹ Qualitative research may be positivist, interpretive or critical (Myers, 1997).

Denzin and Lincoln (2000) have noted that qualitative research involves an interpretive and naturalistic approach, meaning that qualitative researchers study things in their natural settings, attempting to make sense of, or to interpret, phenomena in terms of the meanings people bring to them. As Malterud (2001) elaborates:

Qualitative research, also called naturalistic inquiry, developed within the social and human sciences, and refers to theories on interpretation (hermeneutics) and human experience (phenomenology). They include various strategies for systematic collection, organization and interpretation of textual material obtained while talking with people or through observation. The aim of such research is to investigate the meaning of social phenomena as experienced by the people themselves. (p. 398)

With the above observations providing the epistemological basis of this research, this study draws on a qualitative framework, which is much more a critical interpretation of the politics of abortion in Kenya, rather than its explanation. Interpretive studies generally provide a deep insight into “the complex world of lived experience from the point of view of those who live it” (Schwandt, 1994, p. 118). Although my data did not emanate from individual Kenyan women who have experienced abortion first-hand, the importance of my research participants and the documents that were reviewed lies in the fact that the expressed opinions and perspectives have the capacity to influence state policy on abortion. As such, a qualitative approach enabled me as a researcher to identify the social constructions, meanings, and discourses that inhibit Kenyan women’s ability to access safe abortions, as well as the possible solutions to unsafe abortion.

The fact that the basis of qualitative research seems to lie in the interpretation of social reality was quite fundamental in my endeavour to analyze the politics surrounding the complex and seemingly private issues of reproduction and abortion in Kenya. Because social reality is seen as locally and specifically constructed, neither I as a researcher nor my sources of data could claim the position of *knower*. Instead, in line with Guba and Lincoln (1994), I assumed that my research findings would be literally and subjectively created as the investigation proceeded. This enabled me to work closely with my research participants and data as I sought in-depth insight into the varied positions on abortion, the factors underpinning those positions and their implications, and the

proposed mechanisms for dealing with the abortion problem. As Orlikowski and Baroudi (1991) observe, a key aspect of qualitative research is the idea that meaning is constructed by individuals in their uniqueness as part of a particular context and interactions, and those meanings are in turn reflected in state policy documents and laws.

The view of social reality as being based on people's definition of it radically challenges the positivist hegemony of objective fact and objective reality. From this perspective, abortion neither exists independently of the meanings people attach to it, nor outside of the existing social practices, processes and meanings that are operative in Kenya, including values, ideas, culture and religion, politics and institutions. As such, how actors in the abortion debate construct and ultimately represent the social phenomenon of abortion is important in their attempts to influence state action as well as being understood as responses to the state. Ultimately, the proffered discourses determine Kenyan women's lived experiences of abortion. It is for this reason that discourse and discourse analysis is an important aspect of the methodology used in this study.

3.2. Discourse and Discourse Analysis

There are many definitions of discourse and discourse analysis in the literature, which may vary not just with discipline, but with intellectual persuasion (Phillips & Hardy, 2002; Sunderland, 2004). Potter (1997) identifies five versions of discourse analysis. Three of these relate to linguistic and cognitive psychology and a fourth to the study of discourse as texts and talk in social practices. These are of limited interest here. The fifth version, which is attributed to Foucault and is of interest to this study, is based on the assumption that discourses, or sets of statements, constitute objects and subjects (ibid.). In this view, language, put together as discourses, arranges and naturalizes the social world in a specific way and thus informs social practices (Foucault, 1976). In other words, social practices are constructed within, and regulated by, existing discourses.

Foucault's views of discourse and discourse analysis are also expressed by other scholars. For example, Hajer (2005, p. 1), defines discourse as "an ensemble of ideas, concepts and categories through which meaning is given to social and physical phenomena" while Fairclough (2003, p. 124), identifies discourses as

“ways of representing aspects of the world”. As defined by these scholars, discourses can be summed up as the structuring principles of society (Weedon, 1987), and because discourses are constitutive of the way of talking and writing about a particular issue, they frame the way people understand and act with respect to that issue (Watson, 1994). Abortion discourses in this study are thus understood as structured discussions of abortion by different actors, with each discourse providing its own version of *the truth* asserting why abortion is acceptable or unacceptable and proposing different strategies for dealing with the issue. In other words, a discourse is a political strategy that different groups use to try to shape the way policy issues are understood, to discredit opponents, and to bring about change.

Foucault (1978) suggests that although discourses both reflect and shape the way we experience and interpret the world around us, the public spaces where discourses interact and are deliberated are seldom fair or equal. Rather, the voices and interests of the powerful, or the dominant discourses, often have an upper hand. The dominant discourses not only get institutionalised in key discursive sites such as state laws and constitutions, but also become reference norms, thus silencing and/or marginalising all other opposing discourses. In Kenya, for example, the criminalization of abortion in the Penal Code is a clear sign of the institutionalization of the anti-abortion discourse.

Foucault further explains that discourse and power are established through the principle of exclusion, so that some discourses become historically fixed over time as *truth* and *fact*, constituting the formation of a dominant discourse or *truth regime* (Foucault, 1974). If power works to hide its mechanisms of operation, as Foucault argues, then the *true* discourse is particularly powerful: because it hides its will to power behind an apparent truth (Foucault, 1974). To be situated within a dominant discourse means that only certain types of realities are highlighted, while others are not. For example, although thousands of Kenyan women die annually from unsafe abortion, the dominant institutionalised discourse, which disapproves of abortion, ignores these deaths and instead pays particular attention to discarded aborted fetuses. Additionally, as I will demonstrate in Chapter 7, although unprotected sex, the same process that leads to unwanted pregnancies,

also spreads HIV/AIDS,³² the reality of HIV/AIDS has received policy attention, perhaps because it is high on the international agenda and affects both men and women, unlike abortion and unwanted pregnancies, which have remained largely unaddressed. It is important to note here that discourses are neither uniform nor stable; rather they have to be seen as fragments that can be combined and employed in different ways to match different strategies of power (Foucault 1978). Perhaps in the future, abortion will become less stigmatised, as has happened with HIV/AIDS.

Discourses are embodied and enacted in a variety of texts and although they exist beyond the individual texts that compose them, texts can be considered a discursive unit and a material manifestation of discourse (Alba-Juez, 2009). Texts may take many forms, including written texts, spoken words, pictures, symbols, artefacts, and so forth (Grant et al., 1998). For the current research, written texts and spoken interviews were analysed as manifestations of given discourses.

As a methodological frame, discourse analysis concentrates on the analysis of knowledge formations, which organize institutional practices and societal reality on a large scale (Talja, 1997). Discourse analysis can thus be seen as “...a perspective on social life that contains both methodological and conceptual elements ... [It] involves ways of thinking about discourse (theoretical and metatheoretical elements) and ways of treating discourse as data (methodological elements) ... [as] an alternative to the perspectives in which those methodologies are embedded...” (Wood & Kroger, 2003, p. 3). Since the focus is not on language as an abstract entity but as the medium for interaction, analysis of discourse becomes, then, analysis of what people do and say. Discourse analysis thus involves systematizing the different ways of talking about a phenomenon, with the aim of making visible the perspectives and starting points on the basis of which knowledge and meanings are produced. According to Foucault (1972), expressed perspectives are based on background assumptions, which are themselves the necessary and implicit starting points behind a particular way of speaking about a phenomenon. For example, the perspective that abortion is

³² Most infections in Africa result from heterosexual encounters.

unacceptable because it is the murder of an unborn child may be informed by a religious ideology.

In the present study, discourse analysis functioned to explore how the texts from major actors in the abortion debate in Kenya are made meaningful and how they contribute to the constitution of state policies on women's sexuality, on the one hand, and abortion, on the other, as social realities. Fischer (1995) observes that through a systematic study of texts, it is possible to view the strategies implicit in the creation of different discourses and show the links between how discourse is constructed and how it can function to establish a group's political power. Consequently, an analysis of the discourse and language surrounding abortion is significant in demonstrating how the conservative approach towards the issue has been institutionalised, maintained and entrenched by the state in Kenya, and for what purpose. After all, any given legislation is often an expression of specific discourses which frame both its policy-making process and outcome. Therefore, fundamentally, the current legal framework around abortion in Kenya is a manifestation of the gender regime of the dominant and powerful groups in the country, a regime which has historically had and continues to have a negative impact on women's rights and lived experiences (see Chapter 5). Through analysing the discourses expounded by various actors, my interest is to point out the power and rationalities that underpin given discourses, and to analyze their potential societal and institutional functions and effects (Hajer, 1995). In this I follow Wood and Kroger (2000) who see discourse analysis as:

Fundamentally concerned with analysing opaque as well as transparent structural relationships of dominance, discrimination, power and control as manifested in language ... [it] ... aims to investigate critically social inequality as it is expressed, signalled, constituted, legitimized and so on by language use (or in discourse). (p. 1)

Consequently, in selecting my sources of data, I targeted textual sources and participants who already were, or were likely to be, directly involved in the debate on abortion. The details of how I collected and analysed data are provided in the following section.

3.3. Research Methods

This section provides information on the methodology and fieldwork undertaken to collect and analyse data for this research. I made use of two qualitative methods: semi-structured in-depth interviews and document analysis.

3.3.1. Semi-structured In-depth Interviews

Although various data collection techniques are used in qualitative research, interviews, and more specifically face-to-face semi-structured interviews, were considered the most appropriate for this study. Mathers et al. (1998) have noted that, although personal interviews are labour intensive, they are also the best way of collecting high quality data, especially when the subject matter is very sensitive, if the questions are very complex, or if the interview is likely to be lengthy. I conducted 32 interviews with state and non-state actors in the abortion debate in Kenya in 2009.³³ In selecting the participants, I was guided by the fact that my aim was to provide an understanding of the nature of the Kenyan state and how this shapes the state's treatment of the issue of abortion. As such, I first identified specific institutions with the ability to influence abortion policy in Kenya, or that had been at the forefront of the abortion debate, before narrowing down to specific participants. I discuss the selection of research participants below.

3.3.1.1. Selection of Research Participants

This study focuses on abortion politics in Kenya, and specifically on how the Kenyan state shapes sexual politics in general, and abortion in particular, through its policies and practices. As such, my focus was more on shared ideas that could influence discourses and policies on abortion, rather than individual opinions. Thus, before identifying in-depth interview participants, I first selected state and non-state institutions and organizations that I considered relevant to the issue of abortion in Kenya. State bodies were considered important because any policy changes to abortion laws would involve the government. Non-state organizations

³³ I also visited Kenya in August 2010. However, during the two weeks of my stay, I did not conduct interviews but mainly collected newspaper articles, press releases, and any information I could find regarding the just concluded debate on Kenya's draft Constitution.

on the other hand were considered significant actors in the debate as they were involved in appealing to the state to either decriminalize abortion or sustain the law criminalizing it.

In selecting participating organizations, I began by identifying the two major categories: state and non-state actors. For each of these categories, I made a list of all institutions that could be influential in decisions concerning abortion in Kenya, or that had been involved in the debate on abortion. In the category of state actors, I included Parliament as the central legislative authority in the country. In this category, I was targeting Members of Parliament (particularly female MPs) and Cabinet Ministers and/or their assistants in Ministries such as Health, Public Health and Sanitation, Gender, Children and Social Development, and Constitutional Affairs. In addition to the politicians, I also settled on senior civil servants, and specifically on permanent secretaries, since they function as chief accounting officers, charged with the implementation aspect of work of the government ministries. Due to the fact that officials from these ministries who participated in this research requested anonymity, their positions or departments cannot be identified. The choice of the state actors was in line with my analytical framework, the Critical African Feminist Perspective, which recognises the importance of considering the nature and structure of the state when seeking to understand the Kenyan state's treatment of the issue of abortion.

Three other state bodies that were considered included the Kenya National Human Rights Commission, the Kenya Law Reform Commission, and the National Council for Population and Development. The Kenya National Human Rights Commission, mandated to protect and promote human rights in Kenya, was considered instrumental in providing information on the government's position on abortion as a woman's right. On its part, the National Population Council for Population and Development was important because it is the first government body to promote a broader examination of abortion in the country. The Kenya Law Review Commission was established as a primary agency to spearhead law reform and review processes. Since decriminalization of abortion would require a review of the Penal Code in Kenya, participation from actors from the Review Commission was considered ideal for shedding more light on the government's plans in relation to the laws governing abortion. For these organizations, I targeted

the Chief Executive and their assistants. I selected these individuals because by the virtue of their positions, they were capable of speaking on behalf of the organizations or departments that they were heading.

Non-state organizations were divided into two categories: those in support of abortion law liberalisation, and those opposed.³⁴ The organisations in favour of decriminalisation included the Federation of Women Lawyers (FIDA-Kenya), the Coalition on Violence Against Women Kenya (COVAW), the Kenya Medical Association (KMA), the Kenya Human Rights Commission, the Centre for the Study of Adolescents, and the Reproductive Health and Rights Alliance (RHRA). These bodies have been at the forefront in the campaign for the legalization of abortion in the country. In this category were also two women's organisations, *Maendeleo ya Wanawake* (the Progress of Women), and the National Council of Women of Kenya (NCWK).³⁵ Various international non-governmental organisations were also included in this category: International Projects Assistance Services (IPAS), Planned Parenthood, and Marie Stopes Kenya. These organisations have been very active in the campaign to legalise abortion in Kenya and are known to have helped introduce Manual Vacuum Aspiration (MVA) equipment in the country. Further, Marie Stopes Kenya provides a broad range of reproductive health services, including menstrual regulation, through its expanding clinic network, while IPAS has conducted numerous studies in relation to abortion in the country.

The publicly known non-state actors opposed to abortion law liberalisation tended to be religious bodies. Those targeted included the Catholic Church, the National Council of Churches of Kenya (NCCCK), and the Supreme Council of Kenya Muslims (SUPKEM). The NCCCK is a fellowship of Protestant churches and Christian organisations, while SUPKEM is an umbrella body of all the Muslim organisations, societies, mosque committees and groups in Kenya. The NCCCK and the Catholic Church have been the most vocal in speaking out against any attempts to initiate policy reform in regard to abortion in the country. For the

³⁴ It was easy to identify the organisations and their stand on abortion as this was publicly known.

³⁵ It is worth noting that these two organisations have not campaigned for abortion decriminalization. Being the largest women's organisations in the country, I was interested in understanding their failure to champion an issue that affects numerous women in the country.

NCCK, I targeted the General Secretary and another officer who wished to remain anonymous. At SUPKEM, I interviewed a Sheikh and two other officials of the organization. With the Catholic Church, I was interested in talking to at least one Bishop, a senior officer of the Catholic Justice and Peace Commission, and another from the Health Commission.

3.3.1.2. Conducting in-depth interviews

I used several strategies to secure and conduct formal interviews. As already noted, because my target participants were people with the capacity to influence public policy, they tended to be more powerful than me. As such, the issue of access was quite fundamental. While the issues involved in researching people who are less powerful have been widely dealt with, the challenges of *studying up* have often been overlooked (Nader, 1974). Researchers have however acknowledged the difficulties of getting access to more powerful and influential people (Gilding, 2002) as they are usually keen to maintain their privacy through a range of strategies, including the appointment of gatekeepers such as personal assistants, secretaries and advisers (Burrage, 2002). Because they are also often more knowledgeable on the research topics than the researchers, have more money, and assume a higher status, they are generally a sophisticated group to interview (Gillman, 2005; Harvey, 2010; Odendahl & Shaw, 2001).

In the case of senior state officials and politicians who were included in my list of potential participants, accessing them proved to be a difficult task. I visited their offices and requested interviews through their personal assistants or secretaries. This was not always granted, with explanations proffered that they were either busy or were travelling outside of the city or country.³⁶ In such instances, I left behind my information sheet and contact details (Appendix D), with the hope that I would be subsequently informed regarding when an interview could be offered. In the majority of cases, this did not happen. I had to make numerous visits to the said offices and although I sometimes managed to interview the targeted individuals, this was not the norm. In some instances, senior officials directed me

³⁶ Sometimes this was untrue. I do not know if the gatekeepers intentionally barred me from accessing their bosses or the bosses themselves did not want to be seen. I did however notice that if a *powerful looking* individual sought to see the bosses while I was waiting, they were allowed to.

to their juniors while in other cases, I eventually had to give up. In such instances, I relied on publicly available documents such as newspaper articles that reported their views or comments on the issue of abortion.

It is important to mention that non-state actors, except for very senior religious leaders,³⁷ were much easier to access. In these cases, I was able to walk into their offices and request interviews. In a majority of cases, a date for the interview was immediately fixed. In cases where I couldn't meet the targeted individuals and there was a secretary, I left them with my contact details and information sheet and, in most cases, I was contacted either through email or telephone. Participants in this category were also very helpful in suggesting other individuals whom they thought would be of use to my research.

3.3.1.2. 1 Interview process

All interviews were conducted in the research participants' offices and interviews began only after participants had read through and signed a consent form (Appendix E). The interviews, which lasted between 40-120 minutes, were guided by open-ended questions to facilitate the discussion (see Appendixes A, B, C). I had three sets of open-ended questions, one for each of the three categories of participants identified earlier. Although some questions in the three sets overlap, each set of questions was tailored to elicit information specific to the category of participants being interviewed. For instance, with state actors, I pointed out the fact that senior government officers had publicly given contradictory statements on abortion and asked the participants why that was the case and also enquired on the government's official position. I hoped that their explanations would point towards the neo-patrimonial nature of the Kenyan state and how it affects Kenyan women in general and the issue of abortion in particular, as noted in my analytical framework (see Chapter 2). I however required all participants to share their opinions on women's position in the Kenya. With this question, I hoped to get participants' views on the various ways, including laws and practices, by which women are discriminated in the Kenya. If answered in details, the participants' answers would address some of the aspects noted in my analytical framework (see

³⁷ I managed to interview a Catholic Bishop and a senior Anglican Church official but only through the intervention of colleagues from the University of Nairobi.

Table 1) and specifically how patriarchy, gender discriminative laws, poverty, women's underrepresentation in governance, among other factors, contribute to Kenyan women's disadvantaged position. Importantly though, the guide questions were used only as a guideline for the interview and to facilitate discussion. They were in no way imposed upon my research participants whom I allowed to structure and define the abortion issue as they saw it. This is more so because follow-up questions depended on the response received. By allowing my research participants to direct the interview, I was able to get information about their views, outlooks and prejudices on abortion, some of which I had not even considered myself.

I conducted the interviews with due care, taking into consideration the moral, cultural and political overtones of the abortion issue. The sensitivity of the abortion issue was demonstrated by the constant promises I had to make to assure my participants that the information they provided was for research purposes only and that it would not find its way into the newspapers. This is understandable because many participants expressed opinions which they would otherwise not express in public. It is possible that the fear of publicity was behind senior officials' decisions to refer me to their juniors when I sought interviews. In other instances, participants whom I had approached as representatives of their organisations insisted on speaking in their individual capacities, either because they were not aware of the state's official position, or were uncomfortable with it.

During the interviews, I was always aware of my own pro-abortion stance and how this could shape this research. As I sought to know from my research participants their opinions on abortion, why they held their positions, and how they thought the government should deal with the issue of unsafe abortion, I made a conscious effort not to influence them by using a non-judgmental conversational style that allowed them to speak freely. Although I may not have been completely free of bias, the fact that I was aware of my own potential bias made me work harder at communicating a balanced view. For example, when participants said they were opposed to abortion, I asked them to explain why they felt so without necessarily trying to convince them why abortion should be legal.

The collected data was documented in two major ways. First, I kept a field notebook in which I entered daily events and observations. Secondly, I used an audio recorder to record the interviews with my research participants. In the two instances where participants did not wish to be recorded, I made entries into my notebook. Once I came back to New Zealand in August 2009, I manually transcribed 30 of the 32 interviews that I conducted. While in Kenya, I had transcribed two interviews for research participants who had indicated a wish to review the transcripts. Although the transcripts of recorded interviews are verbatim, expressions of emotion were generally left out unless considered important, for example, if a participant seemed hesitant in expressing his or her position on abortion.

3.3.2. Document Collection

A wide array of secondary material was also used extensively. During the research design period, I had intended to use documents from the Kenya National Archives in Nairobi for background information on the history of abortion in Kenya, which dates to the colonial time, when abortion legislation was instituted. I had hoped that an understanding of the discourses informing the criminalisation of abortion at the time would provide a basis for explaining its continued illegal status. Unfortunately, no such information was available because at the dawn of Independence, the colonial state either destroyed or took away most of the documents that were in their possession, and perhaps also because the Kenyan Penal Code, in which the abortion policy was listed, was based on the Indian Penal Code, which was transferred to Kenya with minimal amendments (Luongo, 2011). However, I was able to obtain some historical information on female circumcision, which, as discussed in Chapter 4, has useful parallels with the abortion issue today. I obtained letters and memos exchanged among the colonial government's officers, and also those exchanged with and among Christian missionaries, all of whom were major actors in the debate on female circumcision. This information is dated from 1926 to 1956. I also visited a library run by the National Council of Churches of Kenya (NCCCK) from where I retrieved information on female circumcision and on the organisation's position on contraceptive use.

Government reports, survey data and policy documents, including Acts of Parliament, demographic and health reports, and census reports, among others, were also used for information on the magnitude, causes, and effects of abortion and related issues. Parliamentary proceedings and specifically Hansard records, were consulted to provide information on Parliamentary deliberations focusing on abortion and related issues such as family planning, female circumcision, violence against women, and child welfare. These documents cover the period from 1959, when the colonial Legislative Council debated and adopted the Affiliation Act, up to 2012, as discussions continue on the implementation of a new Constitution adopted in 2010.

Documents produced by non-state organisations were also widely used. This is mainly because campaigns for improved access to reproductive health care in general, and abortion in particular, have been spearheaded by non-governmental organizations. The documents include reports by various groups, among them the Kenya Medical Association, Guttmacher Institute, Center for Reproductive Rights, FIDA (Kenya), and the Centre for the Study of Adolescents. These documents provide information on the magnitude of abortion in Kenya, characteristics of women who have abortions, factors influencing women's reproductive choices, and also critiques of the law criminalizing abortion.

Other notable sources of secondary data were academic publications (books and journals). These documents provided me with an opportunity of reviewing the existing studies on abortion in Kenya. Other information came from newspapers, radio, television channels, local magazines and press releases, as well as internet sites such as facebook, blogs and official websites of organisations. These were particularly suitable for capturing popular comments on issues relating to abortion, family planning and gender relations. Besides, both state and non-state actors in Kenya often use mass media to release findings on abortion or to make counter statements.

While the period that the documents cover appears long, it is important to clarify that documents on abortion are not extensive. This is mainly because debate on abortion is usually episodic, reacting mainly to reports on its magnitude and effects, or reactions to discovered discarded foetuses or abandoned new born

babies. The only period that extensive discussion on abortion took place was between 2009 and 2010, as Kenyans discussed a new Constitution, whose most contested issue was abortion.

3.4. Data Categorisation and Analysis

Data analysis has been said to be one of the most difficult and most crucial aspects of qualitative research (Basit, 2003). The objective of analysing the data is usually to determine the categories, relationships and assumptions that inform research participants' views on the issue being studied (McCracken, 1988). In this section, I discuss the procedures through which I interpreted and analysed my data.

It is important to highlight that the aim of the data analysis undertaken for this study was not to test or justify the Critical African Feminist Perspective developed in Chapter 2. Rather, the analytical framework was used as a heuristic tool to try to demonstrate how the nature of the Kenyan state shapes its treatment of gender issues in general, and the issue of unsafe abortion in particular. It was therefore essential to conduct data analysis carefully and, to the extent possible, in a manner that avoided imposing my own personal opinions on the data.

The transcripts, together with secondary data, were labelled and filed for analysis. Because I had already divided my research participants into three major categories – state actors, actors opposed to abortion legalisation, and those in support of legalisation – grouping the material was simplified. All the information that was collected from government sources, including transcripts from interviews with state actors, was stored in one file and labelled SA. I did the same for information received from non-state actors in support of abortion, and those opposed to decriminalization.

However, as I read through the documents to familiarize myself with the content, I realized that my earlier grouping of the data was not sufficient. Firstly, I realised that my initial intention to analyse data from state actors and documents in order to identify *state discourses* on abortion was faulty, since the Kenyan state actors and documents did not exhibit any consistent discourses. Rather, state officials, as well as government documents, expressed multiple, and at times contradictory,

positions. For example, as will become clear later in this study, Kenyan state officials seemed to adopt different positions on abortion when in different contexts. Similarly, government documents exhibited contradictions. For example, although the National Reproductive Health Strategy (NRHS) 1997-2010 was identified as having been developed to enhance equitable, efficient and effective delivery of quality reproductive health services, the policy document made no mention abortion, not even as an acknowledgement of the magnitude of unsafe abortion in the country (Ministry of Health, 1996). These contradictions made me realize that rather than concentrating on the Kenyan state's discourses on abortion, it was more productive, as noted in my analytical framework (see Chapter 2), to concentrate on how the nature of Kenyan governments, both colonial and post-colonial, has shaped sexual politics in general, and abortion discourses and practices in particular.

In relation to the transcripts and documents emanating from non-state actors, an initial reading also revealed that categorizing actors as either pro- or anti-abortion was erroneous. The documents revealed that two research participants whom I had categorised under those opposed to abortion decriminalisation were actually supportive of abortion in specific circumstances such as when a pregnancy threatens a woman's life or in cases of pregnancies resulting from rape. Because I had wanted to interview the participants as representatives of their organizations and they still shared a majority of the organisations' ideals, I did not move their transcripts to the file containing information from those in support of abortion decriminalization. Rather, I decided to make it clear that they were representatives of religious organizations when, and if, they are cited in the study. During the data familiarization stage, I also discovered a medical doctor who was opposed to legalised abortion, although I had interviewed her as a member of the Kenya Medical Association, which supports abortion. For this particular participant, I moved her transcript to the file containing information from individuals and organizations opposed to decriminalization. This was mainly because her opposition to abortion was publicly known as she was the leader of an active organisation campaigning against legalisation of abortion.³⁸

³⁸ I chose not to identify the organisation as this would reveal her identity.

I named the file containing information and documents from state participants and organizations SA (State Actors) and the file with information from those opposed to abortion legalization RA (Religious actors). Additionally, the code NSA (Non-state Actors) was attached to the information from participants supporting abortion law liberalization and AA (Anonymous) to information from sources that could not be clearly identified, such as callers to radio stations and bloggers in online sites. For further clarity and differentiation of the transcripts, I added numerals, using the order in which I interviewed the participants. For example, NSA7 refers to the seventh pro-abortion actor that I interviewed, while RA3 refers to the third religious or anti-abortion participant I interviewed.

After reading and rereading the hundreds of pages of transcripts as well as other texts in the four files, I was able to recognize emerging themes such as the Kenyan government's treatment of the abortion issue and the factors influencing the state's actions and/or inaction, and also the arguments provided by both pro- and anti-abortion actors to support their positions. For instance, as envisaged in my analytical framework, the patriarchal, authoritarian, and neo-patrimonial nature of the Kenyan state was identified as significantly contributing to the state's inability to conclusively deal with the issue of abortion. Furthermore, poverty, women's underrepresentation in government, lack of sufficient sex education, gender discriminative cultural practices, and the general lack of political will, were specifically singled out as hindering Kenyan women's ability to access safe legal abortions.

Having identified the major themes, I embarked on the final stage of the data analysis process which involved mapping and interpretation of the information. At this time, the objective was to explore and uncover the functions and effects of different discursive structures out of the conviction that particular discursive practices were designed to fulfil certain functions. As envisaged in my research questions (see Chapter 1), it was important to account for the factors behind the privileging of particular discourses by actors in the debate, and with what degree of success. For example, I wanted to find out why pro-abortion actors privileged health and economic discourses, while sidelining the rights discourse. This stage is one where the researcher seeks "to regroup the statements, describe their interconnection and account for unitary forms under which they are presented"

(Foucault, 1972, p. 35). By the end of my analysis, it became clear how and why the Kenyan state has enabled the institutionalisation of anti-abortion discourses, while at the same time not enforcing the law criminalising abortion.

3.5. Ethical Considerations

Because of the sensitive nature of the issue of abortion in Kenya, careful attention to research ethics in this study was crucial. The ethical questions reflected in the process of collecting, collating and presenting this study included issues such as informed consent, confidentiality, and bias. Formal ethics clearance was obtained from the Faculty of Arts and Social Sciences Human Research Ethics Committee at the University of Waikato. I also sought a research clearance permit from the Government of Kenya.

At the beginning of each interview, I explained the nature of my study and asked the participants to read through and sign a consent form (Appendix E) to demonstrate their willingness to participate in my research project. Two research participants declined to sign consent forms but verbally gave consent. All participants were informed of their voluntary participation and their right to withdraw from the study any time during the interview, or up to two months after the interview. The participants were assured of confidentiality, and that neither their names nor their official designations would be used so specifically as to reveal their identity. Although four research participants expressed their wish to be formally identified, I chose to use numbers to both respect and protect the identity of those who did not wish to be identified and for uniformity. The only exception to the use of numbers however was when comments or opinions were cited as a matter of public record. For example, as cited in written documents or expressed in public speeches.

During the interviews, I made a conscious effort to phrase probing questions in an unbiased manner, in ways that would not direct my participants into saying things I wanted to hear. I took utmost care not to divulge my personal views on abortion and revealed my personal pro-abortion beliefs only to those participants who asked me directly about them.

3.6. Conclusion

This chapter has outlined the research methodology that guided the study. The methodology and methods presented in this chapter were chosen and designed to help analyse the politics of abortion in Kenya. This chapter has explained the purposes of employing discourse analysis as the most appropriate approach for revealing not just the discourses used by both pro- and anti-abortion discourses, but also how the actions and viewpoints of the actors are influenced by the neo-patrimonial nature of the Kenyan state. In the next chapter, as stipulated by the analytical framework discussed in Chapter 2, I demonstrate how the colonial state introduced neo-patrimonial politics and its attendant norms such as patronage, patriarchalism, clientelism and corruption, which have shaped and continue to shape policies concerning women's sexuality and access to safe abortion, as well as their access to political and economic resources. Using the female circumcision controversy as an example, I show how the colonial state introduced and provided an entry point for a previously unknown situation in which the state could regulate people's bodies and sexuality.

Chapter Four

Colonial Sexual and Body Politics in Kenya: The Female Circumcision Controversy

4.0. Introduction

Sexuality must not be described as a stubborn drive, by nature alien and of necessity disobedient to a power which exhausts itself trying to subdue it and often fails to control it entirely. It appears rather as an especially dense transfer point for relations of power: between men and women, young people and old people, parents and off-spring, teachers and students, priests and laity, an administration and a population.

Michel Foucault (1976, p. 103)

Discursive struggles pertaining to the meaning of, and policy regarding abortion more often than not intersect with other issues such as class, race and gender (Beisel & Kay, 2004; Brodie, 1994). In line with Foucault's observation that sexuality is a transfer point for relations of power (Foucault, 1980), this chapter demonstrates that sexual politics in Kenya concerns two key issues: firstly, the abortion politics relates to attempts to control women's bodies and the meaning of motherhood as a means of defining women's social space, and secondly, the politics is used by the political elite for their own political benefit.

As a precursor to the analysis of abortion discourses in the next four chapters, I will, in the first section of this chapter, provide an historical analysis³⁹ of the Kenyan colonial state and its regulation of sexual politics, which continue to affect women's lives in general, and the abortion debate in particular. Informed by the Victorian vision of the *natural* roles of men and women, the European colonists, in addition to criminalising abortion, contributed to the establishment of a myriad of legislation, commonly known as *customary law*, that shaped the private lives of women in the domestic sphere. Instituting these laws also began a

³⁹ The information in this chapter draws on a range of written materials and data, including official published and unofficial documents, newspaper reports and interest group material, and academic journal papers and books.

process in which gender reforms were, and continue to be, motivated by a desire to strengthen elite, patriarchal political power. The colonialists' system of indirect rule gave rise to powerful patterns of clientelism and patrimonialism, which have been related to the continued subordination of women economically, socially, and politically.

In the second part of the chapter, I focus on the 1929-1932 Female Circumcision Controversy among the Kikuyu people which erupted around the attempt by the colonial state and Christian missionaries to ban the practice (Frederiksen, 2008; Peterson, 2004).⁴⁰ I demonstrate that the politicization of issues concerning women, such as abortion and female circumcision, often leads to the disappearance of women as subjects, leaving control over decisions regarding women's bodies in men's hands. At the same time, politicization also leads to a simultaneous shift of focus from the effect that these practices have on women, to how the elite would be affected by any state action or inaction on the issue. In this process, as will be demonstrated in this chapter, women's and gender rights issues are often trumped by patriarchal, nationalist and/or capitalist concerns, which as claimed by liberal, radical and socialist feminists, lead to women's subordination in all spheres of life.

The importance of analysing the female circumcision controversy in a study on abortion politics is twofold. Firstly, it provides a means of demonstrating how the actions of the colonial state not only introduced but also provided an entry point for the civil management of women's sexuality for state and elite interests. Secondly, the female circumcision controversy enables me to show how the neo-patrimonial politics introduced by the colonialists through the establishment patron-client relationship with African elite men established a process of public policy making influenced by conflicts, negotiations and exchanges of interests, as noted by post-structural perspectives. I show that although the controversy was

⁴⁰ Although the British attempt to ban female circumcision affected other countries such as Sudan and Tanzania (Boddy, 2007; Fiedler, 1996), attention has tended to focus on the Kikuyu experience mainly because of the role the controversy played in the mobilization of the Kikuyu people's anti-colonial struggles through the Mau Mau uprising (Njambi, 2007).

about female circumcision, the main actors – the colonial state, the nationalist movement, and the Christian missionaries – all had other motives in either opposing or supporting the ban on female circumcision. Of central interest in this chapter is the way in which the colonial state and the local nationalist movement, who were otherwise divided on the issues of land alienation and political independence, appeared to agree on retaining female circumcision, although for different reasons, least of which was women's welfare. Similarly, the contemporary abortion debate in Kenya has seen diverse groups such as Muslims, Christians and politicians across political ideologies forming alliances against legalization. Evidently, the regulation of women's sexual morality and reproduction is one of the few areas where agreement can be reached among otherwise divergent male dominated interest groups.

4.1. Representation, Colonialism, Body and Sexual Politics

In this section, I provide a discussion of the ways in which political discourses construct individual and collective women's bodies and how state policies create, or do not create, spaces for women's agency (Harcourt, 2005). By focusing on pre-colonial and colonial body and sexual politics, I hope to show not just how bodies and politics come together in technologies of regulation and of resistance (Bell & Sheffield, 1994) but also how the human body, and specifically the female body, functioned for the colonial government as "text, social object, and field for the inscription and operation of colonial power" (Gouda, 2008, p. 175). Through the establishment of networks of power relations operating at the personal and political level of the body, the colonial state was able to regulate populations and discipline individuals, with the aim of producing docile bodies and pliant minds (Scheper-Hughes & Locke, 1987, p. 8) to serve its interests. For, as de Certeau (1984, p. 139) observes, "There is no law that is not inscribed on bodies. Every law has a hold on the body." Furthermore, the history of the African female figure has been linked to colonialism, as the sex and gender role conflicts in post-colonial Africa are partly as a result of social structures that arose during the colonial period (Little, 1973; Mbilinyi, 1988). This is mainly because the hierarchical gender roles and discriminatory relationships in politics, economics, religion and culture that were introduced by the colonial state were retained at independence (Aniekwu, 2006).

The onset of official colonialism was not the initial contact between the Western world and Africa. Rather, travellers' and explorers' tales of their experiences in Africa and in other uncertain continents had produced a folklore that presented these places as libidinally erotic (Busia, 1989/90; McClintock, 1995; Magubane, 2004). Thus, long before the nineteenth century, these geographical areas had become what McClintock (1995, p. 22) describes as "porn-tropics for the European imagination." Africa, in addition to having been established as a place of perverse negation, was also figured as occupying a different geographical space and zone. It was portrayed as a place out of time in modernity and historically abandoned in prehistory. Africa's black population, like their continent, were assigned an inferior rank as the earliest human beings on the evolutionary scale (Gilman, 1985; Tamale, 2011). They were seen as the embodiments of prehistoric promiscuity and excess, in addition to being described as proud, lazy, treacherous, thievish, and addicted to all kinds of lusts (Magubane, 2004). Unlike their white counterparts, Africans were seen to lack history, reason, and proper domestic arrangements (O'Barr, 1994). These negative depictions of Africans helped the colonial governments to legitimize their right, even mandatory role, to intervene in African societies in order to help them progress (Levine, 2004; Povinelli, 1994).

While black people were collectively figured as primitive and savage, African women much more than men were perceived as the epitome of sexual aberration and excess. The African female, the lowest point on the ladder of the evolutionary hierarchy, was seen as possessing not just a primordial sexual lust but also the external signs of this temperament, as evidenced by her primitive genitalia (Gilman, 1985). African women were the antithesis of European sexual mores and beauty, as evidenced by Sara Baartman, the Khoisan woman from South Africa who was exhibited at European balls and human zoos as the Hottentot Venus because of what was perceived as her anatomical abnormality (Schiebinger, 1993). Her large breasts, buttocks and elongated labia, referred to as 'primitive genitalia', were said to mirror her primitive sexual appetite (Qureshi, 2004). Upon her death in 1815 her skeleton, genitals and brain were displayed in a Paris museum (BBC News, 2002). In 1994, President Nelson Mandela formally requested the return of her remains and France agreed to this request in 2002.

In addition to metaphorically marking the symbiotic boundaries of European national identities and white supremacy, African women's sexuality was also considered a threat to the fiscal economy of the imperial state (Davis, 1997; Levine, 2004). Depicted as sexually insatiable, ignorant, stupid and inherently subversive, African women were subject to increasingly vigilant and violent policing (Magubane, 2002; McClintock, 1995).⁴¹ It was within this framework that sexuality became a significant state policy issue as well as a key site of colonial anxieties in the state's attempt to create individuals who were particularly suited to the colonial society (Foucault, 1978). For example, in an attempt to encourage African men to seek paid work, the colonial state criminalised adulterous sexual relations between African men and married African women (Barnes, 1992). Informed by their views of African women and their sexuality, European colonialists blamed the women's sexual demands for African men's reluctance to work away from home.

Said (1979) has noted that the colonialist's ideological construction of the colonized *Other* as different and subordinate was important in creating a clear binarism between the colonizers and the colonized, thus not only justifying unequal treatment but also suppressing the voice of the *Other*. However, and more importantly, the exotic and alluring representations of the colonies by colonial states served the purpose of inciting virile and adventurous soldiers and workers into the unknown, uncharted and virgin soil of Africa (Ponzanesi, 2005). Using masculine sexual metaphors that exhibited an overlap between sexual domination and colonialism, colonies were seen to occupy the same space as a beautiful, docile and sexually available local woman, but one whose beauty was a snare and an enticement to destruction. As Steen (1941) observes:

Africa is a woman, a dark devastating witch of a woman, coiling herself around you like a snake, making you forget everything but her burning

⁴¹ Schmidt (1991) observed that colonial administrators saw African women as responsible for drawing African men into temptation and therefore as the principal offenders in adulterous liaisons. Hence, adultery was criminalised. Furthermore, women, especially prostitutes, were blamed for the spread of venereal diseases and illegal beer brewing (Bujra, 1975). Consequently, women often underwent forced testing for diseases and were subject to constant harassment, arrest, imprisonment and fines (ibid.).

breasts... Listen to the drums of Africa reminding every man of things he forgot ... when he left his mother's womb. (1941, p. 319)

Discourses of rape, penetration and impregnation guided the use of African female bodies as metaphors for the conquered land (Young, 1995). The colonies were seen to occupy the same space as women whose evident nakedness, like their land, made them ready to be violated and exploited by the imperialists. In this "male power-fantasy," the Orient was penetrated, silenced and possessed. (Said, 1979, p. 207)

Additionally, the colonialist's self-declared superior understandings of sexual conformity, gender relations and civil progress availed the state grounds for intervening in the local social practices of the colonised people. By portraying Africans as sexually irregular and socially disordered, colonial governments were able to justify intervention in, and regulation of, local marriage customs and economic activities for state and European settlers' benefit. By so doing, Europeans introduced in Africa a previously unknown social notion that rational sexual and gender relations are produced by the civil state's intervention (Povinelli, 1994). By imposing Western morality on African communities, the colonial state altered the dynamics of gender and sexuality especially because its overt support for patriarchy challenged the cooperative and dual sex-gender concepts embedded within African cultures and communities (Busia, 1951).⁴²

4.2. Colonial Sexual Politics in Kenya

These pre-colonial and colonial European representations of African women and sexual and body politics clearly influenced the relationship between the colonised and coloniser in Kenya. In particular, they influenced the colonial state's attempts to discipline women's sexuality and behaviour for the good of the empire (Baines, 2003). In what follows, I seek to demonstrate the power of the state to operate at

⁴² Busia (1951) explains that although male dominance existed at many levels, including the domestic/household level and level of popular culture, the cooperative and dual sex structures created a façade of egalitarianism by allowing women a voice in certain leadership roles and public female representation.

both the personal and political levels of the body and more specifically at the level of women's bodies.

The inter-war period (1918-1939) saw the British change their policy towards African colonies. The economic and political crises of World War I and parliamentary demands for low-cost colonial rule encouraged colonial officials to seek inexpensive ways of sustaining the colonies (Parpart, 1994). Besides, as John Cell (1999, p. 249) notes, "the widespread disillusion of inter-war Europeans with Western civilization" also played a role in the acceptance that the war had destroyed European's prestige as civilisers of so-called *backward* and *primitive* peoples (Adas, 2004; Crowder, 1964). Consequently, the colonialists abandoned the civilising mission to instead promote stability and economic growth, especially to counter Germany's emerging industrial and naval power (Shadler, 2006).

In order to govern the colonies less expensively, with less reliance on military force and administrative personnel, strengthening traditional African male authority presented a logical solution (Parpart, 1994). As Lovett (1989) has noted, social control necessitated maintaining and strengthening those social relations of power and privilege on which pre-colonial societies were constructed. Colonial authorities thus sought to incorporate pre-existing polities, with their own structures of authority and political processes, into colonial structures. Henceforth, *African* ideas of custom and of law were to be incorporated into the new state systems as ideological and financial underpinnings for European colonial rule (Shadle, 1999). This system of indirect rule, in which the local rulers confirmed by the colonial administrators could exercise their own power personally, arbitrarily, and corruptly, has been identified as the root of contemporary neo-patrimonial governance in Africa (Ekeh, 1975; de Sardan, 2009; Njoku, 2005). De Sardan (2009) has argued that rather than importing the same type of bureaucracy that existed in their home countries, the colonialists implemented a system in which the gap between colonial administrators and the local people was much greater. To him, this gap and some of the features it engendered such as despotism, privilegism and the role of intermediaries, have proved to be seemingly intractable problems for postcolonial African states.

By seeking to rule through *traditional* African authorities in order to appropriate their legitimacy, colonial administrators had found a vehicle through which they could not only legitimize colonial state, but also to mould African societies to meet their needs (Chanock, 1982; Ranger, 1983; Roberts & Mann, 1991). Convinced that the pre-colonial societies must have had some form of authority that governed day-to-day life, the colonial government reconstituted indigenous male African rulers and freshly imposed leaders where none had existed (Lange, 2004; Mamdani, 1996). As Sir Donald Cameron, a British colonial governor, explained:

The rule of the Chief is deeply rooted ... the people have a real attachment to their Chief and the system of tribal government to which they belong. It would surely be mere vandalism to set out to smash an organisation like this Their loyalties to their own institutions ... [which] form one of the most valuable possessions which we have inherited ... make for law and order in the land as nothing else can. (Cameron, 1937, pp. 5-6)

Chiefs, installed as colonial functionaries of the local state apparatus, were endowed with broad legislative, judicial, and executive powers (Boone, 1994; Chanock, 1985; Mamdani, 1996; Merry, 1991; Migdal, 1988; Roberts & Mann, 1991; Schneider, 2006). A chief had the right to pass rules governing persons living under his domain, he executed all laws, and was the administrator in *his* area, in which he settled all disputes. In Mamdani's words, "the authority of the chief thus fused in a single person all moments of power: judicial, legislative, executive and administrative" (1999, p. 874). Scholars have blamed the colonial introduction of the system of *authoritarian chieftaincy* to many contemporary African problems, among them corruption (Njoku, 2005), patrimonialism and clientelism (de Sardan, 2009), and state illegitimacy (Englebert, 1997). It is important to note the gender aspect in the appointment chiefs as the colonial rulers appointed only men, because they considered a chief the *patriarchal* head of a patriarchal tribal order (Trotha, 1996). As will become clear later in the chapter, the consequent patriarchal alliances struck between various colonial administrations and African chiefs and male elders resulted in the systematization and codification of patriarchy across African states (Bozzoli, 1983). As radical feminists would argue, women's subordination got embedded in state apparatus, procedures and structures (Mackinnon, 1989).

Alongside the reconstitution of tribal leadership, a customary law intended to regulate non-market relations in land and in personal/family and community affairs amongst the locals was implemented (Maddox, 1996). Charged with adjudicating according to *customary law*, African chiefs and male elders invented customs that expanded their powers vis-a-vis women (Allman & Tashjian, 2000; Ault, 1983; Geisler, 1992; Mbilinyi, 1988; Parpart, 1988; Shadle, 2003). Consequently, what was codified as customary law emphasized the rights and authority of males and elders while also emphasizing the powerlessness and deference of women and junior men (Chanock, 1982; Schmidt, 1990). Most affected were laws in the area of personal law in regard to matters touching on gender relations in the context of marriage, divorce, inheritance, child custody, and property rights within marriage (Chanock, 1982; Schmidt, 1990).

These laws reduced women's access to productive resources, such as land and the labour market, which reinforced the *capture* of female labour for the benefit of male patriarchs, capitalism and the state, as argued by socialist feminist theories (see Chapter 2). On their part, colonial officers accepted this version, of course with their own input,⁴³ because they recognized that colonial order depended on male elders maintaining local control. Further, the authority of local leaders was enhanced by the establishment of the Native Authorities and Native Authority Courts to enforce the reconstituted customary law (Parpart, 1994).⁴⁴

According to many scholars, these legal changes deeply compromised women's status in the courts and in society at large (Mbilinyi, 1988; Jeater, 1993; Lovett, 1989; Parpart, 1988; Penelope, 1987). It is notable that in the period before the introduction of indirect rule, a degree of female emancipation had been

⁴³ In accepting what could constitute customary law, colonial administrators introduced a repugnancy test which they used to gauge which African practices were inadmissible (Ndulo, 2011). However, the colonial administrators' choice for what was repugnant has been criticised because provisions that were struck out were mainly those that empowered women and were contrary to the Victorian views as to the role of women in society. For example, practices that were declared repugnant included woman-to-woman marriage and paternity rules (ibid.). Surprisingly, many contemporary contentious issues such as female circumcision, polygamy and discriminatory inheritance practices were not challenged.

⁴⁴ The government established two parallel court systems, one under the administration for Africans and another under the judiciary for others such as Europeans (Mamdani, 1999). African courts handled customary law disputes, involving matters such as bride-wealth, adultery, runaway wives and daughters, minor assaults, theft and land, while disputes involving whites or Asians, and other more serious offenses such as rape and murder, were heard by magistrates. Muslims could take their disputes to the local Islamic court (Shadle, 1999, 2008).

encouraged by European missionaries and the colonial state,⁴⁵ who considered practices such as child-pledging and forced marriage repugnant (Schimdt, 1990). During this period, African women and girls were able to take advantage of colonial courts to challenge fathers, husbands, and guardians (Vaughan, 1987) or run away to the emerging towns, farms, and mission stations to escape patriarchal control in the countryside. This was not supported by newly appointed local leaders who accused the colonial state of doing away with the restraints of indigenous laws and customs without providing an alternative means of control (Parpart, 1988). In the interests of economic development and the financial well-being of the colony, government officials chose to help and support African men in exercising *their rights* over women, who were at the time seen as posing a serious threat not just to African male authority, but also to the entire system of indirect rule (Little, 1973; Mbilinyi, 1988; Robertson & Berger, 1986). Notable here is the implied relationship between patriarchal control over female mobility and sexuality and the survival of indirect rule (Mbilinyi, 1988; Robertson & Berger, 1986).

In addition to addressing African male elders' concerns about women's independence, the colonial state was also interested in the control of women for political and economic reasons. Recognition of the importance of rural women's productive and reproductive labour to the national as well as domestic economy made European state officials advocate for increasingly stronger legal measures for the control of African women's mobility (Schimdt, 1991). Following the introduction of compulsory labour for communal and European private purposes, women's labour participation was important (Kilson, 1955).⁴⁶ As Thuku observes:

A settler who wanted labour for his farm would write to the D.C. (district commissioner) saying he required thirty young men, women or girls for

⁴⁵ In the period before 1925, there was a strong feeling that British justice should transform African society. However, between 1925 and 1945 the commitment to revolutionary change was replaced by more conservative ideas of gradual evolution which involved supporting *legitimate* local leaders and relying on functionalist definitions of tribe-based culture (Shadle, 2006).

⁴⁶ On October 23, 1919, the Northey Circular was issued, declaring that henceforth the British government's labour policy in Kenya would seek to induce Africans to leave their reserves and take up work on European farms. To this end, all colonial officials responsible for the administration of the African reserves were directed to use their influence to secure an adequate supply of African labour for work on the European farms (Kilson, 1955).

work on his farm. The D.C. sent a letter to a chief or headman to supply such and such a number, and the chief in turn had his tribal retainers to carry out this business. They would simply go to the people's houses, very often where there were beautiful women and daughters, and point out which were to come to work. Sometimes they had to work a distance from home, and the number of girls who got pregnant in this way was very great. (Thuku, 1970, p. 16)

Women's position was worsened by their loss of land to white settlers, the introduction of Hut and Poll taxes,⁴⁷ and the subsequent migration of male labour (Kanogo, 1987). The colonial state-imposed taxes, intended to coerce African men into finding jobs on settler farms or in urban areas in order to be able to pay their taxes (Kitching, 1980; Okoth-Ogendo, 1991; Stichter 1982), led to a massive male out-migration. This resulted in women becoming indirectly responsible for men's tax obligations as husbands and sons commonly spent longer periods of time away (Oduor & Kabira, 2000). Women's labour time thus became over-utilised as they had to maintain agricultural production in the absence of their men, in order to feed themselves and their children (Silberschmidt, 1999). The new policies had the effect of laying the legal groundwork for social, cultural and economic changes in African women's roles. For example, the fact that the colonial labour market favoured male employees made men the primary income earners which in turn altered the gender identities of rural African women as they were no longer the primary source of income or wealth (Redding, 1993). This, on the one hand, lifted men from traditional economies to tangible economic endeavours, while on the other, it relegated women to the private world of unpaid domestic work on production and human reproduction. This scenario not only altered gender power relations and marginalized women further (Okeyo, 1980), but also demonstrates the co-optation of gender relations and elite control of women in the interests of state and patrilineage.

It should be noted that although the colonial state sought to control women's migration into cities by requiring them to carry passes (Robertson, 1996), those in paid employment, small-scale business women, and prostitutes were tolerated (Parpart, 1994; Schimdt, 1990). These women were seen as contributing to the

⁴⁷ The 1901 Hut Tax Regulation imposed a tax, payable in kind or labour, upon every native hut in British East Africa.

European economy through their own employment and sale of cheap farm produce. Further, by providing domestic and sexual services to male workers, prostitutes helped in the reproduction of the migrant labour force and also the development of colonial capitalism that was predicated on that labour (White, 1990). Clearly, as noted by radical and socialist feminists, African women's relationship with the state was anchored on what the state could gain from them.

Researchers have demonstrated that the "unholy alliance" (Schmidt, 1991, p. 753) of African men and the colonial state resulted from their shared interest in tightening their control over women's sexuality and mobility (Barnes, 1992). For the state, women's agricultural production in rural areas lowered the cost of reproducing the urban workforce, as the money the men earned was not enough to live on. Moreover, containing women in the rural areas was intended to ensure men's return to the native reserves and thereby slow down the processes of African proletarianization (West, 2002; Wylie, 1977). African men, on the other hand, were anxious over their loss of control over women's mobility, income, and sexuality. While many women had run off to the cities to become domestic workers or prostitutes (Shadle, 1999; White, 1990), others had become small-scale businesswomen. In response, the men were, on the one hand, uncomfortable about their meeting with *strange* men, and, on the other, desirous of controlling their income (White, 1990).

Notably, some of the laws intended to bring African women under control also reduced them to the status of permanent legal minors, especially with regard to access to productive resources – particularly land – codified polygamy and also bridewealth payments (Jeater, 1993; Ncube, 1987; Shadle, 2006). In the interests of bolstering male authority in exchange for maintaining law and order, colonial state officials chose to ignore such customs that would have otherwise been considered repugnant to the European sense of morality. For instance, although colonial officials were highly critical of bridewealth transfers and polygamy, these practices were not considered so offensive as to warrant state intervention and the provocation of the older men's anger (Schmidt, 1990).

It should, however, be clear that the colonial era did not invent female subordination and the control of women's fertility. Rather, contrary to claims

made by ethnologists such as Kenyatta (1938) and Leakey (1977), gender relations were modified and distorted to fit the changed circumstances. In the words of McClendon (1995, pp. 535-536), “the cloth of female subordination was re sewn in a new social order”. For example, in most pre-colonial Kenyan societies, the fertility of women was symbolically linked to the fertility of the land. Because society’s well-being was perceived as directly related to women’s ability to bear healthy children, their sexuality was constantly governed and regulated (Kenyatta, 1938; White, 1990). This was achieved through the institutionalization of patriarchal households for controlling fertility, as well as the rites of passage such as circumcision, which licensed women and men to become sexually active and reproduce (Guy, 1981; Kenyatta, 1938). However, although gender relations were unequal, women’s role as agricultural producers and as social and biological reproducers gave them forms of power and status, and hence they were not merely passive victims of male dominance (Atkins, 1993). They possessed the latitude to exert influence on daily life, land ownership, religious rituals, and even the political realm. It has been observed that:

On marriage, women were given access to productive land, which they worked themselves. They were in control of the process of agricultural production and retained for their own use a substantial proportion of the product of that land and their labour. Work was heavy but it took place in a community which provided substantial security. The value attached to fertility gave the possessors of that fertility social standing and social integrity (Guy, 1981, p. 46).

With the arrival of Europeans in Africa, this relatively autonomous position took a drastic turn as the gender power of patriarchy within traditional cultures reinforced that of colonialism (Lihamba et al., 2007). Despite this, it is noteworthy that women often successfully resisted and strategized to evade control, gain individual autonomy and exercise command over the course of their own lives. For example, barren women,⁴⁸ those in unhappy marriages, or those who wanted to escape forced marriages often sought refuge at religious mission stations, left their husbands to elope with other men, or absconded to cities and towns where they contracted non-bridewealth marriages or lived independently as prostitutes.

⁴⁸ Infertile women were able to retain their status by marrying other women who gave birth to children on their behalf (Muriuki, 1974; Njambi & O’Brien, 2000).

Indeed, prostitutes were among the first African landlords in Nairobi (White, 1990).

The above discussion has shown how colonial ideologies on sexuality and gender arrangements influenced the lives of men and women in the African colonies. In an attempt to gain maximum economic benefits, the colonial state, in conjunction with African male elders, engineered a 'customary' law which helped to entrench patriarchal control over women and junior men, but at the same time weakened women's claims to productive resources, and especially land. In the interests of maintaining law and order, state officials accepted the premise that African females were perpetual minors under the tutelage of a male guardian, whether it was their father, uncle, husband, or son (Schmidt, 1990). This led to the establishment of a state that was openly patriarchal, sexist, and capitalist, as argued variously by liberal, socialist and radical feminists' theorisations of the state (see Chapter 2). Furthermore, the fact that the authoritarian colonial state was grounded in patron-client relationships with local *big men* introduced the concept that access to the state and state resources was dependent on patrimonial relations, thereby marking the beginning of neo-patrimonial politics in Africa. Because neo-patrimonial governance is based on assembling political supporters through patronage rather than issues, policies tend to be chosen on the basis of gaining clients and the end product is generally influenced by negotiations and exchanges of interests, as claimed by post-structural feminist theorization of the state. In the following section, I focus on the female circumcision controversy in Kenya and demonstrate how negotiations and exchange of interests played a leading role in determining state policy on abortion.

4.3. The Female Circumcision Controversy: An Introduction

As is so often the case, the debate concerning these women is less about the women themselves than about the appropriation of women as political symbols. In other words, it is about the use of women as ammunition in a polemic of central concern to their lives, but where the issue at stake is not the women's own interests but, rather, the consolidation of the powers of others to define those interests. (Winter 1994, p. 939)

In this section, I focus on the Female Circumcision Controversy (1929-1932) to demonstrate how circumcision became a battleground on which male actors

sought to showcase their power “through the body-scape of women” (Bhattacharji, 2004, p. 5), and to illustrate Kikuyu women’s subsequent reaction. While it may appear illogical to talk about female circumcision in a study intended to provide an analysis of abortion politics in Kenya, my reasons are threefold. First, an analysis of the controversy that arose from the colonial government’s and Christian missionaries’ attempts to ban female circumcision provides an opportunity to not only showcase how the colonial experience introduced state and civil management of human sexuality, but also that state action and/or inaction in implementing policies is guided by its own interests rather than those of citizens. Secondly, I intend to highlight the similarity between the political debates underlying the treatment of female circumcision and those that inform the state’s handling of abortion. I will demonstrate that what is at stake in contemporary Kenya’s abortion debate is not women’s lives and/or health, but a political contest between powerful, and primarily male, elite groups. As in the female circumcision controversy, women are not seen as actors but as objects and symbols to be manipulated by others who have taken centre stage. Lastly, I will also demonstrate women’s ability to challenge state and male control.

The female circumcision issue brought together three groups, all arguably patriarchal – the local nationalist movement, the colonial state, and Christian missionaries – in a head-on confrontation mainly for political legitimacy, in which women and their sexuality became the battleground. Although each group purported to be championing women’s needs, women were never consulted; perhaps because they were not viewed as able to construct their own positions and interests. Instead, their bodies became sites of acute struggle between the contending hierarchies of authority, each seeking to stake a claim to power over women. For the nationalists, a circumcised female body was not just a flesh and blood ethnic boundary; rather, circumcision became a means of demonstrating loyalty to tradition, as a measure of challenging colonial rule. The colonial state, on the one hand, used the controversy to discredit the nationalist movement in the eyes of European sympathisers, while on the other, it chose not to interfere with the practice for fear of African men’s reaction. The European missionaries, in contrast, thought banning female circumcision would eliminate the immorality

and physical dangers they associated with the practice. On their part, women challenged attempts to ban circumcision by continuing with the practice.

An understanding of how female circumcision was, in the colonial period, utilised as a tool to gain political mileage, especially by the nationalist movement, will help explain the post-colonial Kenyan government's treatment of gender issues and sexual politics. Research has suggested that unequal gender relations during independence struggles laid the basis for post-independence gender inequality and discrimination (Chadya, 2003; Kanogo, 1987). Instead of addressing women's issues arising from the customary law introduced by the colonial government, the Kenyan nationalist movement worsened the situation by manipulating the women's question for the benefit of ideological propaganda (Cutrufelli, 1983). Upon independence in 1963 after a brutal war of liberation in which women actively participated,⁴⁹ the gender and generationally discriminative customary law (Phillips, 2004) was appropriated by elitist male African leaders to continue serving their interests at the expense of women and younger men (Stamp, 1991). With power structures remaining unchanged, juridical independence led neither to democracy nor to social justice for Kenyan women following the institutionalization of male bias in state bureaucracies and policy formulation (Geiger, 1996; Goertz, 2002; Kanogo, 1987; Parpart & Stuardt, 1989). In fact, it wasn't until 2001, when Kenya adopted the Children's Act, that female circumcision was made illegal for girls under the age of 18 years.⁵⁰

Serious concern about female circumcision surfaced in Kenya after the First World War when a number of missionary societies denounced the practice and forbade it among their members (Kenyatta 1938; Peterson 2004).⁵¹ In 1929, three Protestant missions, the Church of Scotland Mission (CSM), the African Inland

⁴⁹ Women were involved in a variety of active roles in the independence war, including scouting/spying, smuggling guns, supplying food and medicine, recruitment, administering oaths, and combat (Edgerton, 1989; Geiger, 1996; Kanogo, 1987; Maloba, 1993; Odhiambo & Langsdale, 2003; Otieno, 1998).

⁵⁰ Section 14 of the Children's Act states that, "No person shall subject a child to female circumcision, early marriage or other cultural rites, customs or traditional practices that are likely to negatively affect the child's life, health, social welfare, dignity or physical or psychological development" (Children's Act 2001).

⁵¹ There is no evidence of any internal opposition to female circumcision before the arrival of Europeans (Keck & Sikkink, 1998).

Mission (AIM), and the Gospel Missionary Society (GMS), issued a formal declaration that required African followers to sign a disavowal of female circumcision (Natsoulas, 1998). The Protestant missionaries demanded that their African faithful sign a pledge (called a *kirore*, or *thumbprinp*) to the effect that they would not participate in female circumcision⁵² or join the nationalist Kikuyu Central Association (KCA), a nationalist party of which Jomo Kenyatta was the general secretary. The reaction of African congregation to the missionaries' demand was immediate as it led to a massive boycott of mission schools and churches. The breakaway Africans established their own schools and churches, independent of government and missionary management, and allowed female circumcision (Ahlberg et al., 2000; Maina 2004).

In what follows, I examine the responses of the major actors following the Protestant missionaries' attempts to ban female circumcision, as their reaction at the time reflected the shared assumptions and different agendas which underlay the process of negotiating colonial rule. I will begin by examining the colonial government's reaction, followed by the missionaries', and those of the nationalist movement. In the last section, I examine colonial administrators' understanding of women's subjectivity in the female circumcision debate, and how this understanding shaped the colonial state's campaign against the practice. I also elaborate on the factors behind Kikuyu women's unwillingness to abandon female circumcision.

4.3.1. The Female Circumcision Controversy and the Colonial State in Kenya

As early as 1906,⁵³ Christian missionaries had been campaigning for the eradication of female circumcision, condemning it as barbaric, pagan and unacceptable to a proper Christian lifestyle (Snively, 1994). However, it wasn't until 1925 that the colonial state agreed to a *cautious* policy of urging Local

⁵² It was primarily men who were to renounce the rite either on behalf of their daughters or, in the case of young men, by promising to marry uncircumcised girls.

⁵³ It is at this time that Dr. John W. Arthur of the Church of Scotland Mission (CSM) and the leading Protestant opponent of the practice publicly announced his opposition to female circumcision and began to actively campaign against it. Dr. Arthur was also the representative of African interests on the colonial government's Executive Council (Pederson, 1991).

Native Councils to encourage less substantial operations, rather than to ban it (Ambler, 1989). The Female Circumcision By-laws that were originally adopted by Embu Local Native Council and later passed by majority councils read in part:

1. No person other than one duly authorised by the Embu Local Native Council shall, within the Embu district perform or assist in the performance of the operation of clitoridectomy.
2. No person subject to the jurisdiction of the Embu Local Native Council, in the Embu district when performing or assisting in the performance of clitoridectomy shall make an incision of greater extent or depth than is necessary for the removal or excision of the clitoris. Any other incision into or mutilation of the private parts of a woman shall not be performed or permitted to be performed.
3. No person may perform more than one operation of clitoridectomy and no person may permit more than one such operation to be performed on any woman to whom he is in the position of parent or guardian.
4. Any person affected thereby who shall refuse, neglect or fail to comply with the aforesaid resolutions shall, be guilty of an offence punishable under section 8(2) of the Native Authority Amendment Ordinance of 1924.⁵⁴

Notably though, these regulations, designed to ensure that the practice was under the control of the government while at the same time appearing to remain in the hands of the local people, were more often than not flouted (Ambler, 1989). It is as a result of this that the Christian missionaries attempted, in 1929, not just to enforce the restrictions but actually prohibit female circumcision among their adherents. The consequent establishment of independent churches and schools by aggrieved Africans, under the leadership of the local nationalist movement, did not augur well for the colonial state administrators for several reasons. First, state administrators were worried that they would not be able to control what was being taught and/or practised in the independent schools and churches. Secondly, at about the same time in Britain, female parliamentarians⁵⁵ and feminists were urging the House of Commons to ban the operation because of the danger it posed

⁵⁴ K.N.A. PC/CP 8/1/2 cited *in* Native Affairs Department Circular #16, 23 June, 1931.

⁵⁵ Duchess of Atholl and Eleanor Rathbone, raised the subject for debate in the House of Commons (Pederson, 1991).

to infants and mothers during childbirth (Pederson, 1991; Shadle, 2006). Thirdly, the colonial state was also faced with the development of African political consciousness engineered by the new breed of missionary-educated political leaders who had spawned a variety of political associations, among them the Kikuyu Central Association (KCA), the most radical political organization in this period (Schilling, 1976).

The colonial state's reaction to the emergent controversy over female circumcision demonstrates the close connection between politics and sexuality in colonial governance (Levine, 2004). Despite pressure from Europe, colonial officers in Nairobi were reluctant to endorse the missionaries' actions in banning female circumcision among their adherents or even to initiate aggressive anti-circumcision campaigns for fear of losing ground in their patron-client relationship with local male power bases (Mufaka, 2003). When the missionaries refused to back down from their demands, Sir Edward Grigg, the Governor of Kenya at the time, not only disassociated the government from the missionaries' actions but also asked their leader, Dr. Arthur, to resign as the representative of African interests on the government's Executive Council (Pederson, 1991). While admitting that circumcision was physically damaging to women, the government saw its abolition as rather more dangerous to the colonial order (Boulanger, 2008; Snively, 1994). By incorporating individuals into the Kikuyu social order, circumcision was deemed beneficial to the provision of tribal discipline and indirectly to the stability of the colonial state (Pederson, 1991). To the state, therefore, the missionaries' ban on the practice was jeopardizing the stability of the existing tribal structures and hence of the colony. Besides, legislation to prevent the practice was not only difficult to enforce but also had the likelihood of uniting the Africans against the Government.

The colonial government, by agreeing to legislate only against the more brutal form that included the removal of the labia, but not against clitoridectomy (Mufaka, 2003; Pederson, 1991),⁵⁶ seems to have chosen to concentrate on female

⁵⁶ It is not clear which operation was more dominant because researchers have presented conflicting information. Leakey (1931) and Njambo (2004) have claimed that the mild one which involved the removal of the clitoral hood was the norm. However, Pederson (1991) notes that the colonial state in Kenya claimed the more brutal form that involved the removal of all external genitalia was the most common.

circumcision's impact on women's reproductive health and specifically on complications arising from circumcision during childbirth, rather than on its physical effects on women's bodies. It has been noted that the colonial government was at the time facing serious labour scarcity and circumcision had been identified as contributing to maternal mortality and morbidity (Boddy, 1982). Since clitoridectomy, which involved the partial removal of the clitoris, had no such consequences, the state may have found no need to legislate against it (Pederson, 1991). In support of the state's position, Dr. Baedeker, in a report to the Director of Medical and Sanitary Services, intimated:

Regarding the results of female circumcision, I do not think there is any doubt that after the operations the open wounds become severely septic owing to the lack of cleanliness and antiseptic measures with the result that the inflammatory conditions following circumcision must ultimately end in adhesions in the vagina itself and incidentally causing a contracted vaginal orifice in cases of childbirth.⁵⁷

However, a Kenyan ethnographer, Leakey (1931), refuted the doctor's claims by arguing that increased problems during childbirth were a result of multiple factors, including operations by unskilled circumcisers and an increased faith in medical doctors which led to severe cases of health complications finding their way to missionary or government hospitals. For Leakey, the few complicated cases were not representative of the majority of women, who were not incapacitated by circumcision.

Whatever the pain and danger involved in these operations, the colonial administration was extremely reluctant to support the missionaries' attempts to give the 1925 regulations teeth. Further, in contrast to the anti-female circumcision debate in Europe at the time, colonial state discourse in Kenya ignored the physiological effects of female circumcision on women's sexual response (Pederson, 1991). Instead, the colonial officers in Kenya felt that continued interference with the female practice would negatively affect the colony

⁵⁷ K.N.A. PC/CP 8/1/1; Report from Baedeker to Director of Medical and Sanitary Services forwarded to the Chief Native Commissioner, August 1930.

by drawing the local people into the arms of the nationalist movement, which had been provided with an issue around which solidarity could be fostered (Brendon, 2010; Natsoulas, 1998). To strengthen their case, colonial state administrators in Kenya warned the central government in London of the possibilities of rape, murder and/or circumcision of white women in the colony if the ban was enforced (Hetherington, 1998).⁵⁸ This argument by the colonial settlers in Kenya seems to imply that the safety of white women was dependent on the recognition of Kenyan men's rights (as seen in the persona of the nationalist movement), to speak for black women. Thus, in choosing to back down on the campaign against female circumcision, the Labour government in Britain seems to have accepted that the right to speak for women of one's own race and culture comprised a central component of male political rights (Pederson, 1991; Winter, 1994). Clearly, the female body was instrumentalized in the establishment of male prerogatives. Additionally, by withdrawing the legislation for fear of African men's reaction, the state adjudicated a situation in which women's needs, as claimed by traditional feminist analysis of the state, were bypassed in favour of those of men.

Notable here, as I will demonstrate later in the chapter, is the alignment of the colonial state's interests and those of the nationalist movement on the issue as both supported the retainment of female circumcision. As with the reformulation of customary law earlier noted, it seems that men's anxieties about women's sexuality provided a point on which the opposing groups could reach agreement. For the colonial state, however, sustaining female circumcision also played a more important role in the discipline of African men who were seen as a threat to the maintenance of social order through possible unrest and uprising. Thus, despite the hostility that developed on both sides, the result of the circumcision controversy was the production of a regime in which the Kikuyu patriarchy and the colonial patriarchy colluded to silence Kikuyu women, as, although they were the central figures in the debate, they are conspicuously silent.

⁵⁸ This was given impetus by the murder of a white elderly missionary, Miss Hulda Stumpf, who some settlers in Kenya claimed had also been circumcised during the attack (Rosberg & Nottingham, 1966)

It is also worth noting that some researchers have accused European law makers and feminists who opposed female circumcision of hypocrisy for claiming to rescue Kenyan women and African societies while turning a blind eye to the brutality of colonialism and the benefits accruing to all Europeans in general (Boulanger, 2008; Njambi, 2007). Their purpose in interfering with female circumcision seems even more contradictory when viewed alongside the vested colonial political and economic interests. After all, the colonial administrators' initial support for the ban on female circumcision could not have been rooted simply in moral indignation over clitoridectomy, because this practice was also current in Europe in some quarters (Harcourt, 1988).⁵⁹ Rather, colonial officers were wary of the political threat presented by the nationalist movement and the harm caused to their labour source, as newly circumcised youths would be out of work for months following the procedure (Boulanger, 2008; Robertson, 1997). I thus contend that the colonialists' earlier *dignified* arguments that the female circumcision ban was intended to protect African women from a barbaric rite of passage had been used to mask their real interests in colonial labour control and economic development, as the practice was widely held to account for low birth-rates and high levels of infant and maternal mortality, hence lost population and ensuing low levels of production and consumption of imperial wares.

4.3.2. Christian Missionaries and Female Circumcision

For their part, while the Christian missionaries' discourse was ostensibly about protecting African women's bodily integrity, their attempt to ban female circumcision was implicitly motivated by broader concerns regarding women's sexual morality. In addition to publicly licensing sexuality, the missionaries thought circumcision simultaneously licensed the social reproduction of backward, heathen bodies which needed to be brought into the realm of Christian morality. Thus, hidden behind the publicly more acceptable discourse of women's protection was not just the racist ideology that defined Africans as immoral, but also an attempt to reorder African women's sexuality as a means of redeeming

⁵⁹ At the turn of the century, European and American doctors used clitoridectomy as a cure for masturbation, nymphomania, lesbian inclination, hyper-sexuality, hysteria, epilepsy, catalepsy, melancholy, and even kleptomania (Harcourt, 1988; Lightfoot-Klein, 1989).

Africans.⁶⁰ An examination of missionaries' response is important as it provides an opportunity to demonstrate that, contrary to traditional feminist perspectives that portray the state as a monolithic entity (see Chapter 2), the state is better understood as a site of struggle and compromise, wherein different groups, such as the missionaries, compete to influence state action and/or inaction. Examination of this issue also reveals how religious organisations have historically silenced women's voices in their female circumcision debates, just as they now do in the abortion debate in contemporary Kenya.

As noted earlier, Protestant missionaries demonstrated their opposition to female circumcision by initiating a campaign requiring their followers to sign a pledge disavowing the practice. The by-laws legislated in 1926 demonstrated their attempt initially to modify the practice so as to make it less repugnant to the Christian conscience (Brendon, 2010; Snively, 1994). The by-laws limited female circumcision to the removal of the clitoris and required that only one operation be performed on a girl. Further, the government restrictions permitted only trained and registered women to perform the operations. However, it seems that by 1929, the Christian missionaries could no longer stand the practice and were intent on eliminating an operation that they thought painful, sometimes fatal, and always irreversible (Rosberg & Nottingham, 1966). Strangely, in response to the resultant abandonment of their schools and churches by their African faithful, Christian missions keen on retaining their young members, who would have otherwise left the churches or schools to get circumcised, chose to appropriate and *christianize* the circumcision ceremonies (Boulanger, 2008). This was done by encouraging girls to have the circumcision carried out by trained midwives in their mission hospitals and dispensaries (Murray, 1976; Natsoulas, 1998). For example, the Church Missionary Society (CMS) 1931 Female Circumcision Guidelines read in part:

- That the ceremony be performed hygienically and without publicity, and that only communicants of the church be present. But in the event of girls belonging to parents not baptised, the same be entrusted to Christian women duly chosen by the parents.

⁶⁰ This will be demonstrated in Chapters Five and Six, where it will be shown the same ideology is behind religious anti-abortion discourse, as well as HIV/AIDS prevention measures that promote abstinence.

- That the ceremony be entirely disassociated from repugnant customs before and after, and that antiseptics be supplied free.⁶¹

While Christianizing and medicalizing the operation addressed the missionaries' concerns about the threats it posed to women's health, the explicit exclusion of ceremonies that, according to the missionaries, placed "undue emphasis on sexual life" (Thomas, 2003, p. 22), raises questions regarding why missionaries had wanted to ban circumcision in the first place. Effectively, by abolishing the public celebrations, the songs, the dances and the feasting which imparted sexual knowledge to the newly circumcised girls, the missions engineered the separation of the physical operation from its social meaning. In fact, the missionaries not only ignored circumcision's social role in promulgating morality, but actively denied and simultaneously reversed any social role it may have had. Dr. Arthur, in a Church Missionary Society (CSM) memo, claimed that:

It has been stated that, where initiatory in character, the rite is usually accompanied by definite instruction on social matters. Among the Kikuyu however, little, if any, specific instruction is given. On the other hand, the incidental teaching of village life, and the sex appeal of the dance-song, begun in early childhood, and culminating in the emotionalism of the circumcision ceremony, undoubtedly constitute a full preparation for sexual life. There is little doubt, however, that this preparation is corrupting in its effect, and, moreover, psychologically dangerous in the undue emphasis on sexual life which it engenders in the mind of the initiate.⁶²

A major consequence of the separation of circumcision's social meaning from the physical operation was that without public visibility, the physical operation, the very centre of controversy, could now be done secretly. In other words, the female circumcision ban reduced it to a clandestine excision thus making it more dangerous as it could be performed by incompetent people (Thomas, 2003). This

⁶¹ K.N.A. DC/EBU/32; C.M.S. (Kabare) circumcision guidelines, cited in memo from Rarnpley (C.M.S. Kabare) to PC Nyeri; cc to DC Embu; 21 July, 1931.

⁶² K.N.A.DC/FH 3/2/1; The Church of Scotland, Memorandum prepared by the Kikuyu Mission Council on Female Circumcision, 1931.

has happened with abortion in Kenya where women resort to untrained individuals since legal abortions are unavailable.

The fact that female circumcision was provided in mission hospitals and dispensaries demonstrates that the physical operation itself was not the contested aspect of the practice. Missionary opposition to the female circumcision ceremonies can therefore be deduced as being grounded in circumcision's relationship to sexuality, as noted by the above quotation. As far as missionaries were concerned, far more damaging than the removal of the clitoris was the fact that circumcision allowed women, or more specifically, adolescent girls, to become sexually active (Leakey, 1931; Murray, 1976). To the missionaries, described by Murray (1974, p. 48) as "puritan 'Victorians' in the fullest sense of the word" and for whom "drinking, smoking, dancing, and other worldly amusements were regarded as sinful", the circumcision ceremonies not only undermined the moral formulations of British middle-class culture, but worse still, made sexuality a social and public issue by making initiates witness a demonstration of sexual intercourse by an elder couple (Snively, 1994). Additionally, after circumcision and before marriage, men and women were allowed to engage in a form of limited sexual activity termed *Nguiko*, a form of mutual masturbation which stopped short of actual intercourse (Edgerton, 1989; Kratz, 1994; Leakey, 1977; Maloba, 1993; Shaw, 1995). The *Nguiko* normally followed a public dance in which dancing partners were kept for the night either at a man's *thingira* (bachelor's house) or a woman's *Kiriri* (girl's sleeping place) (Njambi, 2007; Shaw, 1995). In Leakey's (1977) words, the boys were "instructed to lie with a girl, caress her breast and have a form of mutual masturbation". Thus, unlike European girls who were chaperoned in order to observe chastity, Kikuyu girls had to accomplish this by remaining virgins in a sexually charged environment (Shaw, 1995).

It is this sexual freedom that Leakey (1977) and Kenyatta (1938) cite when asserting the superiority and humanity of African traditions over those of Europeans (Njambi, 2007; Shaw, 1995). Kenyatta (1938), for example, argues that Europeans, who kept their youths separated and chaperoned, could not understand the moral strength and restraint exercised by Kikuyu youths. To him, the European traditions denied unmarried people legitimate ways to express their

sexuality in exchange for spiritual purity. Kenyatta observes that, “In order not to suppress entirely the normal sex instinct, the boys and girls are told in order to keep good health they must acquire the techniques of practicing a certain restricted form of intercourse, called *umbani na nguiko* (platonic love and fondling)” (1959, p. 149). Through *Nguiko*, Kikuyu women were trained to respond to a wide range of bodily sensations in addition to allowing them time to appreciate their bodies’ responses in preparation for marriage (Shaw, 1995). Furthermore, sexual activity between the men and women circumcised together during the same ceremony could take place for the rest of their lives, regardless of marital status.

Female circumcision and *Nguiko* are quite relevant to the current research on abortion in Kenya. *Nguiko* played the dual role of preventing premarital pregnancies while at the same time acknowledging premarital sexual needs and desires (Njambi, 2007). In fact, increased instances of unwanted pregnancies at the time were blamed on restrictions placed on the practice by the colonial officers and church missionaries. Kenyatta (1938) notes that in the pre-colonial communities, sexual restraint was demanded of couples and punishment for noncompliance included ostracism. In his words:

The stigma attached to the ostracism was far greater and very much worse than that attached to the European form of imprisonment. Many Gikuyu would prefer to go to jail rather than to be ostracised. The fear of this was one of the chief factors which prevented the people from committing crimes. (1938, p. 230)

Following the establishment of the colonial government, many young people awakened to the fact that under the new regime, there was no punishment for premarital pregnancy, and so they began to engage in full intercourse (Leakey, 1931). The natural result was young women getting pregnant after circumcision, which led to a rising clamour for terminations. Note ought to be taken that like state officials, the missionaries paid little attention to the physiological effect of female circumcision. Pedersen (1991) argues that this was because female sexuality had not been overtly politicized at the time, and hence those who wished to defend female sexual pleasure lacked a language in which to phrase their objections to circumcision.

A rather intriguing element in the missionary response was the silence of the Catholic Church in the female circumcision controversy. Catholic Missions in Kenya had no problem with circumcision since, as far as they were concerned, it posed no threat to salvation (Keck & Sikkink, 1998; Snively, 1994). Calverra, a Catholic Bishop of the Consolata Catholic Mission, observed that:

I had the opportunity to discuss the matter of female circumcision with some leading Christians of Embu in the past days. They insist that the act is not necessarily connected with ceremonies repugnant to the Christian conscience; it can be, and actually is in many cases, performed in a nonobjectionable way, purely as a tribal custom to mark the passage of a girl to maturity. In these circumstances I wish to make it clear that to say that the Catholic Church heartily condemns it would overstate the case and lead to confusion. If there are immoral ceremonies and practices involved, these are condemned, not the act itself, which the Church considers indifferent on the moral point of view. May I suggest that it is for the Doctor, not for the Church, to say the final word on the matter.⁶³

Since Catholic missions did not consider the operation an impediment to one's ability to be a good Catholic, it became common for young women who wanted to have the procedure done to turn to Catholic churches (Snively, 1994). It is possible that, since the controversy happened at a time when missions were competing for members, the Catholic mission's position was influenced by the need to attract more worshippers. Or, conversely, because the Catholic Church at the time did not have hospitals affiliated to them, they may not have experienced firsthand the health consequences of female circumcision, as did the Protestant missions.

Although the above discussion is historical, and may seem out of place in a discussion on contemporary abortion, it has been important in showing the origin of Christian missionaries' interests in controlling women's sexuality which continues to date. Furthermore, I have also demonstrated how powerful forces such as religious groups may be in a position to influence public policy. In the

⁶³ K.N.A. DC/EBU/32; Letter from Calverra (Bishop of Nyeri, Consolata Catholic Mission) to Wilks (OC Embu), 29 January, 1957.

following section, I examine the nationalist movement's reaction to the missionaries' attempt to ban female circumcision.

4.3.3. The Nationalist Movement and the Female Circumcision Question

Issues of sexuality and reproduction often become central to nationalist politics because, as Yuval-Davis (1997) notes, discourses of gender and nation normally intersect and become mutually constitutive. In what follows, I argue that the Kenya nationalist movement's support for female circumcision was part of a tactic of social and political inclusion that was meant to yoke as many people as possible to the nationalist struggle, but without any consideration for women's welfare. Like in other African nationalist struggles, the Kenyan Central Association (KCA) sought to accomplish their objectives regardless of whether it deepened women's subordination (Chadya, 2003; Muhoro, 2002).

The Kikuyu people found the missionaries' ban on female circumcision strange because the operation was seen as the equivalent of the male operation, which was not being contested. Although, as earlier noted, the ban exacerbated the nationalists' quest for schools and churches independent of the missions' control, it also provided a good opportunity for the Kikuyu Central Association (henceforth KCA) to attract considerable support by advocating a rejection of mission teachings and by defending *Kikuyu tradition*. This tendency of nationalists to be "retraditionalisers" (Nagel, 1996, p. 193), and to embrace tradition as a legitimating basis for nation-building and cultural renewal, has been noted in other places, including India.⁶⁴ Citing the biblical passage that there was no difference between the circumcised and uncircumcised, and the fact that the Kikuyu translation of the Bible used the term *muiritu* – a circumcised but unmarried young woman – to refer to the Virgin Mary, the Kikuyu accused the missionaries of ulterior motives in banning the operation (Snively, 1994). They also found no specific prohibition of polygamy, in addition to discovering *heathen* practices such as animal sacrifice and circumcision in the Bible (Maina, 2004), all of which had been banned alongside female circumcision. Since the Kikuyu word

⁶⁴ The nineteenth century Indian nationalists articulated their arguments by making a distinction between the *material* and the *spiritual*, where the material realm corresponded with the outside world and the spiritual realm to the home (Chatterjee, 1989). In this paradigm the home and women were to be the main foci for preserving national culture.

for circumcision, *irua*, does not distinguish between the male and the female versions of the practice (Leakey, 1956; Murray, 1976), many Kikuyu defended and continued to circumcise with the practice as they felt the missionaries were not sincere in banning female circumcision.

To express their dissatisfaction with the missionaries and the colonial government, the Kikuyu developed a genre of scurrilous songs called *muthirigu* (Peterson, 2004; Thomas, 2003).⁶⁵ These protest songs, sung by men and women, ridiculed and chastised Europeans and blamed the signers of the *kirore* for selling Kikuyu land and Kikuyu girls to the whites (Clough, 1998; Muhoro, 2002; Njambi, 2007; Peterson, 2004). The importance of these songs lies in the fact that the lyrics demonstrate how a defence of the Kikuyu sexual order became entangled with long-standing Kikuyu grievances about mission influence and access to land, and more importantly, a mark of loyalty to the incipient, as yet imaginary, nation (Boulanger, 2008; Muhoro, 2002; Pederson, 1991). Further politicization and sexualisation of the practice is evident in some *muthirigu* songs' claims that uncircumcised Kikuyu girls would not find husbands among the Kikuyu men and, therefore, would turn to Europeans who would not only marry them, but also would use them to obtain more Kikuyu land (Natsoulas, 1998).

Evidently, the nationalist association had managed to reframe the debate from one about health and Christianity as presented by Protestant missionaries, to one centred on nationalism, land, and the integrity of traditional culture (Keck & Sikkink, 1998). The consequence of the elevation of female circumcision to being a symbol of cultural nationalism meant that the nationalists came to treat the missionaries' campaign against female circumcision as an act of cultural imperialism (Leakey, 1931). It appears that to the nationalists, circumcision was the dominant symbolic marker of one's membership in the Kikuyu social body and as such, its demise would ultimately lead to the demise of Kikuyu society. Jomo Kenyatta (1959), in defence of the practice, has argued that:

The real argument lies not in the defence of the surgical operation or its details, but in the understanding of a very important fact in the tribal

⁶⁵ Because the means of passing information was limited, the *muthirigu* provided a convenient way of passing secret messages through songs which could be sung anywhere and at any time.

psychology of the Gikuyu, that this operation is still regarded as the very essence of an institution which has enormous educational, social, moral, and religious implications, quite apart from the operation itself. For the present, it is impossible for a member of the tribe to imagine an initiation without clitoridectomy. Therefore the abolition of the surgical element in this custom means to the Gikuyu the abolition of the whole institution. The real anthropological study, therefore, is to show that clitoridectomy, like Jewish circumcision, is a mere bodily mutilation, which, however, is regarded as the condition *sine qua non* of the whole teaching of tribal law, religion and morality. (p. 133)

To nationalists and their supporters, blocking circumcision for women was tantamount to blocking self-procreation for the entire population (Maina, 2004). As such, an attack on female circumcision was perceived as an act of aggression, not merely against individual women's bodies, but also against the Kikuyu body-politic (Snively, 1994). In this way, the nationalist movement sought to show the political function of clitoridectomy as that of maintaining the whole Kikuyu society. As Keck and Sikkink (1998) note, the missionaries' desire to intervene in the most intimate practices of the home strengthened the association between home and nation. In a way then, Kikuyu women became pawns in the struggle for dominance between the colonial state, missionaries, and traditional Kikuyu interests (Presley, 1992). This politically gendered angle to the nationalist campaign confirms Cynthia Enloe's observation that nationalisms have "typically sprung from masculinised memory, masculinised humiliation and masculinised hope" (Enloe, 1989, p. 44).

The Kikuyu Central Association was not the only nationalist movement in Kenya at the time. The Progressive Kenya Party (henceforth PKP) was, however, unlike the KCA, in support of the missionaries' attempts to ban female circumcision. Notably though, although PKP members claimed that female circumcision was an infringement of women's moral and physical integrity, their major reason for supporting the ban was because it was good politics (Peterson, 2004). With a membership of the influential chiefs, merchants, and teachers, the party supported the ban with the hope of becoming clients to the British colonial patrons as they lobbied for local representatives on the Legislative Council, from which they were exempted (ibid.). As some party members explained:

The beginning of civilization is in the honoring of women, because the strength and power of a people comes from its women. The nation which belittles women, we know that they do not go forward but go back.... We of the PKP hate customs which bind the Kikuyu and prevent them from knowing the true religion, and going forward in civilization and becoming a strong people, able to receive their inheritance in mind and body. We want [women] to be whole in body, able to speak the truth, and give evidence in their cases, so that the Government can trust us as being a full-grown nation with clean customs. (PCEA, 1931 as cited in Peterson, 2004, p. 87)

Additionally, some members of the PKP, who were mainly the ruling African elite, were also interested in protecting their authority, which was threatened by the young leaders of the KCA who had begun to castigate the Local Native Councils and denounced both senior chiefs and generation elders for their support of female circumcision reform (Ambler, 1989). In conjunction with colonial officers, the African elders agreed that the activities of the KCA were a sign of a broader and highly disturbing breakdown of male elder domination which was detrimental to the maintenance of law and order. Evidently then, like the KCA, the PKP was also using the female circumcision issue to further its own political aspirations. In fact, as soon as the members realised that the colonialists would not share power with them, the PKP crumbled in 1932, only four years after it was founded (Peterson, 2004).

It is notable that the nationalist movement, the Christian missions and the government focused on the effects of female circumcision on female bodies that were decontextualized, depoliticized and conceived as essentially passive. In other words, when the female circumcision issue became politicized, women seem to have disappeared, both as participants and as political subjects from a discourse that was ostensibly about them. The focus on the possible effects of the ban on the stability of the colonial state effectively led to a discursive shift away from the personal implications of the rite for real women's experiences to its political implications. Consequently, there was a simultaneous shift from a focus on women to a focus on men, and, specifically on their political actions and interests. In fact, as I demonstrate in the following section, colonial state's discourses on female circumcision construed Kikuyu women as passive observers, rather than active participants.

4.4. Kikuyu Women in Colonial State's Discourses of Female Circumcision

The failure of the colonial government's and missionaries' campaigns against female circumcision could have resulted from their failure to understand the significance of the practice from the perspectives of the women concerned. Hetherington notes that:

The conclusion that none of the participants in these debates had any idea about how to control female circumcision is irresistible. The rhetoric on the subject came almost entirely from African and European men, all of whom seemed greatly concerned about this issue, but none of whom considered consulting the women who controlled this activity (1998, p. 122).

By controlling the terms of the discourse, the Europeans assumed changes in practices carried out by women could be negotiated through particular groups of men, and therefore failed to address the political motivations behind the women's support and continued participation in circumcision (Hetherington, 1998). In what follows, I discuss colonial administrators' understanding of women's subjectivity in the female circumcision debate, and how this understanding shaped the colonial state's campaign against the practice. I also elaborate on the factors behind Kikuyu women's unwillingness to abandon a practice that marked their formal initiation into womanhood.

In her description of colonialism, Mohanty (1991) notes that local men and women were inserted into systems of rule that were constructed and defined in fundamentally gendered ways. For example, the colonists constructed politics as an exclusively male domain because from their perspective, colonised women lacked any formal power. As a result, local women were "scarcely if at all to be considered a part of civil society" (Spivak, 1988, p. 217) and any relationships with the local people were thus conducted with men who were, as Mohanty (1991) and Busia (1989/90) have noted, the real objects of colonial rule. Thus, during colonialism, African women lost even their previous status as political actors within traditional politics, since colonial administrators did not consider them worthy clients.

On the one hand, the European construction of African women as passive participants in local politics meant that women remained largely invisible to the colonial administrators.⁶⁶ On the other hand, the colonialists remained ignorant of the power women wielded in the community at large, and over female circumcision in particular (Thomas, 2003). Their ignorance can be deduced from official documents in which women are mentioned only as daughters or wives. For example, while explaining the reasons behind local opposition to the female circumcision ban, Lambert, a colonial District Commissioner, identified detribalisation as one of the major factors. He observed that:

- a. Fathers of girls who had repudiated female circumcision or married to men who had repudiated female circumcision could naturally have no more to do with their daughters and sons-in-law; this means that they would probably suffer loss owing to the tribal system of payment of dowry over an extended period; when payment of the whole dowry was claimed at once it was rarely obtained, since sons-in-law were too poor to pay it.
- b. The alienation of father from son [who marries an uncircumcised girl] was a bad thing from many points of view and was unjust to the father. A son was provided with a wife from his father's property, not his own. In return the father expected support from his sons and grandsons in his old age. If his sons repudiated tribal law he would have neither sons nor grandsons and the family inheritance had been squandered for the procreation of an alien tribe.
- c. Land was in the hands of the *muhiriga* (lineage), and could not be owned in any sense by people of another tribe. The self-detribalised sons could have no right to clan land and had better be provided with plots on Mission land. Fathers naturally wished their sons to inherit but no father dare be so disloyal to the tribe as to allow a "*Kavirondo*" (foreigner) to inherit from him.⁶⁷

In this official discussion about a female operation, women not only appear merely as wives or daughters, but also as a group with no interests at all in a rite performed on their bodies. Although focus is directed toward the possible

⁶⁶ Busia (1989/90), in her study of female representation and subjectivity within colonial discourse has demonstrated how colonial literature not only silences African women but also portrays them as powerless, inaudible, and functionally inarticulate.

⁶⁷ K.N.A. PC/CP 8/1/1; extract from Confidential file of DC Embu, 15 Oct. 1929.

economic losses that men could suffer, an uncircumcised girl would not fare any better. She probably would remain unmarried and poor because land was usually provided by a husband (Leakey, 1931; Kenyatta, 1938). Additionally, like the father cited above, the mother of a detribalised son would similarly have no daughters-in-law to take care of her in her old age.

Encouraged by African Christians who had repudiated female circumcision, state officials had hoped their attempts to control the practice would be interpreted and appreciated as saving local women from a rite they considered unnecessary (Keck & Sikkink, 1998; Njambi, 2007). As such, the Europeans were surprised by women's participation in *muthirigu* protest songs, as well as by their refusal to abandon the practice. However, instead of interpreting the women's refusal as political, the Europeans blamed it on their backwardness and traditionalism (Njambi, 2007; Snively, 1994). Informed by ideologies which defined men as more reasonable and African women as especially barbaric (Shaw, 1995; Stones, 1926), colonial officers argued that:

a) Most of the opposition comes from the old women, who are pushing their husbands into opposition. The elders admit that they are not unduly worried about breaking the custom, but they are very worried at the thought of losing bride price, and say that men will refuse to marry uncircumcised girls, and that the parents will suffer loss.

b) The younger men are perfectly prepared to accept the ADC law, but are a little afraid that their mothers will refuse to allow uncircumcised women into the house.⁶⁸

Notable here is the fact that although the colonial officer acknowledges women's influence on their husbands' stance against the ban, he does not dwell on the reasons behind the women's position. Significantly, while the colonial officers ignored women's power over the rite, African men seem to allude to it by making reference to wives' and mothers' authority. It is therefore difficult to understand why, unlike African men, the colonial administrators failed to identify women's resistance as political even when African men demonstrated their willingness to defer to women's authority. I would suggest that by continuing to perform clitoridectomy and dance *Muthirigu*, women were laying claim to autonomy from

⁶⁸ K.N.A. DC/EBU/32; Confidential Memo From District Officer's Office to DC Embu, 1956.

the African men who were attempting to take control of the female body,⁶⁹ and resistance to the colonial power attempting to control African politics. As Lambert, a colonial administrator noted, the ban yielded nothing and:

The only results of all the controversy have been a vastly increased membership of the Kikuyu Central Association, an extreme distrust of the Mission by the people, and almost universal antagonism to the Pastorate Committees. Nothing whatever has been achieved in the direction of the abolition of the rites or towards purging the church of pagan customs.⁷⁰

Of importance here is the fact that not all women were opposed to the ban on female circumcision. There was a small but consistent group of local people who had converted to Christianity and it is they who gave the missionaries and colonial officers the leverage to intervene in the first place (Keck & Sikkink, 1998). In 1928, this group of women had formed an organisation “*Ngo ya Tuiritu*” (Shield of Young Girls) to protect girls who wanted to avoid circumcision (Peterson, 2004).⁷¹ They depicted female circumcision as an unwanted loss of autonomy and agency. Using arguments that show their views had become intertwined with those of the white missionaries and colonial officials, the women reasoned as follows:

We have heard that there are men who talk of female circumcision and we get astonished because men do not give birth and feel the pain. Some [women] die and others become infertile and the main cause is circumcision. Therefore circumcision should not be forced. People are caught like sheep; one should be allowed to find her own way either to be circumcised or not without being dictated to about one's body (Presbyterian Church of East Africa-PCEA, 1931, as cited in Peterson, 2004, p. 86).

However, at the time, the KCA succeeded in making the ban on female circumcision a critical mobilizing force in generating Kikuyu anti-colonial sentiment (Edgerton, 1989; Kenyatta, 1959; Kratz, 1994; Maloba, 1993;

⁶⁹ It should be remembered that the colonial government laws were normally to be enforced by local leaders.

⁷⁰ University of Nairobi Library: Africana Collection: Lambert Papers: Annual Report, Embu District, 1932: 24.

⁷¹ The women were mainly wives of members of the Progressive Kenya Party (Peterson, 2004).

Odhiambo & Longsdale, 2003). In explaining the KCA's growing influence during the controversy, Maloba wrote:

It became the chief advocate of Kikuyu cultural traditions and the necessity of female circumcision. This appealed to a large section of people and won it a lot of temporary supporters. In championing the circumcision issue, the KCA appeared responsible and respectable to both the young and old in Kikuyu society who were worried about the loss of their cultural heritage at the hands of Christianity as taught by white missionaries. (1993, p. 48)

It can therefore be said that for both men and women, the female circumcision controversy was a political issue framed by nationalist sentiments triggered by economic hardship, land deprivation/alienation, cultural suppression, imposition of taxes, violence, racism and forced labour (Edgerton, 1989; Kratz, 1994; Molaba, 1993; Odhiambo & Longsdale, 2003; Ogot, 2003). However, for women, female circumcision was much more than that, as I demonstrate in the next section.

4.4.1. The Importance of Female Circumcision for Kikuyu Women

Imperialist power did not come to emancipate us Imperialist scholars could write about us Africans as barbaric, uncivilized, morally, mentally, and sexually debased people while ignoring their barbaric, uncivilized aggression against our men and women. (Saadawi, 2005, p. 24)

Contrary to the colonial government's belief, women's participation in female circumcision was not a result of blind adherence to tradition, naked patriarchal power, or false consciousness. Neither was it a result of African women being barbaric, primitive or uncivilised. Rather, the circumcision had social, economic and cultural significance for the women. I would like to make clear that in making this claim, I am not seeking to justify female circumcision. Rather, my intention is to bring to the fore the often overlooked factors behind African women's unwillingness to abandon the practice. Additionally, I also intend to demonstrate the inability of Western-based theories to account both for the actions of Third World states, and for the lived experiences of the women who live there.

Contemporary debate on female circumcision is often heated, with African feminists accusing their Western counterparts of adopting discourses that depict

African women as inferior, *barbaric*, silenced, and in need of saving (Saadawi, 2005, p. 24). This Western view, like the colonial state in Kenya, has been characterised as silencing African perspectives, reproducing stereotypes, and deploying a profound ignorance of African culture and contemporary realities in ways that simultaneously construct the Western world as civilized and sexually egalitarian (Ehrenreich & Barr, 2005; Korieh, 2005). As critics point out, while attacking female circumcision, mainstream Western feminists ignore similar but equally problematic types of genital surgeries that occur in their own countries (Njambi, 2004). These surgeries, like African female circumcision, are performed to make these individuals' genitalia and bodies conform to societal expectations and are not only equally unnecessary, but often result in pain, infection, sexual and physical dysfunction, and permanent disfiguration (La Barbera, 2009). Cosmetic surgeries to which some Western women consent in order to have their bodies conform to patriarchal gender norms include breast augmentation surgery, hymen repair, vaginal tightening, clitoral hood removal (clitorodomy), liposuction, designer vaginoplasty, and even genital reconstruction (Ehrenreich & Barr, 2005).

Among the Kikuyu, as in other communities that practice it, circumcision was a significant rite of passage for men and women. It celebrated their passage into adulthood and, through genital operations on the body, marked them as full members of society. As African elders discussing the ban on female circumcision explained to a state colonial officer:

Those who had taken the oath [to support the ban] must repudiate it or suffer the full consequences of detribalisation. Tribal privileges could only be accorded to members of the tribe; no uncircumcised person could be a member of the tribe and no person who refused to allow his children to become members of the tribe could be granted tribal privileges, since he had failed in his main duty to his tribe, which was to support its integrity and maintain its strength by bringing up his children to become members of it.⁷²

In addition to being accepted into the society, an initiate also became an adult woman and thus ready to be a wife and mother (Njambi, 2007). Uncircumcised

⁷² K.N.A. PC/CP 8/1/1; extract from Confidential file of DC Embu, 15 Oct. 1929.

girls were not considered capable of giving birth, and if a girl became pregnant, she was severely punished and at times forced to have an abortion or arrange for the baby's murder at birth (Shell-Duncan et al., 2000). In some instances, both the girl and her father could be killed together by the tribe. Such a punishment implies that a father who failed to protect the chastity of his daughter would be equally severely punished (Hetherington, 1998).

Female circumcision served as an introduction to, and a mark of respect for, a hierarchy of women in which the senior age-grades wielded significant authority (Robertson, 1991). By transforming adolescent girls into women, circumcision on the one hand differentiated them from younger girls, and on the other, facilitated their mothers' advancement to the privileged position as members of *Kiama gia aka*, the Women's Council (Njambi, 2004). Membership of this privileged and prestigious council, which dealt with agricultural matters like food crops, rainfall, and land use, and also the discipline and regulation of the social life of girls and women, was every Kikuyu woman's dream (Robertson, 1993). Goldschmidt (1986) suggests that circumcision enhanced women's status by binding them together as a group in possession of ritual secrets revealed through initiation; men respected and feared these secrets, thereby offering women greater leverage in male/female interactions. Additionally, all the girls circumcised at the same ceremony heightened each other's status by binding them together in particular *riika* (age-set) that fostered solidarity, mutual aid and sisterhood (ibid.).

In addition to ignoring the social significance of the practice, colonial debates on the abolition of female circumcision failed to pay attention to the economic importance of circumcision to women. On marriage, a woman was allocated land and some livestock in her husband's family (Kenyatta, 1938). Since polygamy was the norm, a woman exercised a considerable amount of authority in her own household, which could eventually grow to include her sons, daughters, and daughters-in-law (Mackenzie, 1986; Obbo, 1976). Amongst the Kikuyu, cultivation rights "were inherited by individual sons on marriage, each son being allocated a portion of land cultivated by his mother for his wife's use" (Mackenzie, 1986, p. 383). In other words, a woman "was the medium through which individual rights to land were transmitted to her sons" (Mackenzie, 1986, p. 383) and by extension to their wives. Consequently, the relationship between a

woman and her mother-in-law was both political and economic. To access rights to the productive resource, it was important for a girl to have been properly initiated into tribal membership through circumcision. Otherwise, she would be rejected by her mother-in-law to be.

Another important part of circumcision was the knowledge imparted to the initiates (Njambi, 2004). This involved traditions, laws, manners, the duties of adults, ideas of appropriate behaviour regarding sexual intercourse, child rearing, or generally any knowledge necessary to function as a successful adult in Kikuyu society (Leakey, 1931). As Kenyatta (1938, p.110) observes, during the circumcision ceremonies “boys and girls must be given full knowledge in the matters relating to sex, to prepare them for future activities in their own homesteads and in the community”.

At another level, circumcision functioned to define sex and gender identity (Grande, 2004). As evidenced by general African popular culture, it was believed that people were not born men or women; rather, they became so (Forna, 2006). Because children were born androgynous, the removal of the foreskin and the clitoris was intended to rid them of the outward signs of sexual duality before assuming adult bodies and roles. Boddy (1982) observes that in strictly sex-segregated societies, women achieved social recognition not by becoming like men, but by emphasizing their differences. Thus, by removing that part of the external genitalia thought to most resemble that of the opposite sex, circumcision was believed to enhance the masculinity of boys and the femininity of girls (Helander, 1988; Winter 1994). Besides, the excised body was viewed as having achieved the aesthetic norm, since genitals in their natural state were considered unaesthetic, unclean, or even as harmful to women’s health (Finke, 2006).

Lastly, through circumcision, cultural and historical events were recorded upon the bodies of women and men, whose age-set was allocated a specific name to signify both the established bonds and the particular historical event that took place during that moment. Kenyatta (1959) observed that:

The history and legends of the people are explained and remembered according to the names given to various age-groups at the time of the initiation ceremony. For example, if a devastating famine occurred at the

time of the initiation, that particular *irua* group would be known as ‘famine’ (*ng’aragu*). In the same way, they have been able to record the historical moment when Europeans introduced a number of maladies such as syphilis into the country, for those initiated at the time when this disease first showed itself are called *gatego*, i.e., syphilis. Historical events are recorded and remembered [in the body] in the same manner. Without this custom a tribe that had no written records would not have been able to keep a record of important events and happenings in the life of the nation. (pp. 129-30)

As Kenyatta explains, ritual female circumcision cuttings were fundamental to the tribal psychology, asserting and reinforcing the educational, social, moral, and religious belonging to the society.

4.5. Conclusion

In the first part of this chapter, I looked at sexual and body politics in colonial Kenya and how these influenced the dealings of the coloniser with the colonised people. By demonstrating how the colonial state’s reconstitution of tribal leadership and customary law disadvantaged women, I have shown the importance of focusing on colonial experiences in the formulation of feminist theories of the state. Specifically, the chapter demonstrates the need to consider how the nature of neo-patrimonial politics introduced by colonialism, as stipulated in the Critical African Feminist Perspective, continues to affect women in general, and gender politics in particular. Even after independence in 1963, the interplay of the gendered and religious legacies of colonial rule have continued to impede gender reforms as they remain embedded in a seemingly static artificial and patriarchal customary law, in contrast to neoliberal economic reforms which have progressed relatively rapidly. In fact, rather than being seen as a remnant of the past, what is today presented as *tradition* in fact reflects more the interaction of the colonial administration’s ideas about *correct* gender relations with those of a conservative male elite, and those of the Christian missions. As such, although abortion in pre-colonial communities was an acceptable remedy for unwanted pregnancies, a common argument against its legalisation in contemporary Kenya is that it is *unAfrican* (as discussed in Chapter 6).

In the second part of this chapter, I used the female circumcision controversy to demonstrate how the colonial state’s attempts to redirect African women’s bodies

and sexualities into the service of the state and capital had the effect of institutionalising a previously unknown situation in which the state could regulate people's bodies and sexuality. I have shown that the colonial state abandoned plans to ban female circumcision because, as far as colonial officers were concerned, they had little to gain and much to lose in the form of social order by interfering with the local practice. Similarly, by resisting the ban, the local nationalist movement had much to gain by attracting more supporters. Between these two groups of men, therefore, there was little incentive to upset the cultural norm. Even Christian missionaries, who supported the ban on female circumcision, were interested not in women's rights to bodily integrity and self-autonomy, but rather in enforcing their own version of Christian morality. The colonial state's failure to consider women's interests in the issue, as shown in the last section of the chapter, demonstrates the problems inherent in using women's issues to negotiate political ends.

The importance of this chapter to the study of abortion discourses in Kenya lies in the fact that the colonial state's reaction to female circumcision provides a template for post-colonial Kenya's treatment of the unsafe abortion issue. By choosing not to enforce laws against female circumcision to forestall a confrontation with the Kikuyu people and more so the members of the nationalist movement, the colonial state seems to have opted to embrace a tactic of *strategic ambivalence*, exemplified by its failure to articulate a clear and consistent standpoint on the issue. As will become evident in the next chapter, rather than address an issue that kills and maims thousands of women every year, Kenya's political elite, like the colonial officers of old, choose to ignore the issue for fear of alienating politically powerful forces such as traditionalists and religious leaders.

This chapter also shows that unlike earlier western feminist theories of the state which evaluated the state using institutional and functionalist terms such as whether *the state* is *good* or *bad* for women, the Critical African Feminist Perspective, which configures the state and politics as a set of debates and struggles over meaning, best describes women's experiences during Kenya's colonial domination. As was clear during the development of customary law as well as during the controversy over female circumcision, all actors in the debate,

including the state, were involved in a struggle to articulate and institutionalize their interests. Although the colonial state may have had the power and authority to always act in its interests, that did not always happen as was evident during debate over female circumcision. As such, it is better to see the state as a site of struggle, not lying outside society and social processes, but having, on the one hand, a degree of autonomy and on the other, being permeated by the society. Additionally, by presenting African women's response to attempts to ban circumcision, I highlighted women's ability to resist state control, in direct contrast the picture created by Western feminist theories of the state (see chapter 2). This is however not to dismiss the state's ability to influence women's lives. Rather, as I will demonstrate in the next chapter where I discuss the Kenyan state's abortion politics, the neo-patrimonial nature of the state significantly contributes to the creation of particular forms of gender relations and gender inequality.

Chapter Five

The Governance Structures of Modern Kenyan State: The Emergent Politics of Abortion

5.0. Introduction

As noted in Chapter 1, an estimated three hundred thousand Kenyan women undergo induced abortion every year. However, although unsafe abortion has figured increasingly in public discourse, it has yet to be conclusively addressed by the Kenyan state. As a result, the question of what ought to be done about it is mired in ambivalence, obscurity and compromise, with the attendant problems of female mortality and morbidity being tacitly recognized but only partially addressed.⁷³ In light of the divisive possibilities of the abortion question, successive post-independence Kenyan governments have favoured the strategy of *sitting on the fence*, an approach that is not unlike that of the colonial state in the case of female circumcision. However, inaction and ambivalence have become untenable as a result of various factors, among them public and media pressure to address the issue, and the increased ability of different groups to express themselves and influence the course of debate. The social actors in the debate include women's and other non-state organisations that have been asking the state to legalize abortion, and anti-abortion groups galvanised mainly by Christian churches, which have worked to prevent major policy change by the government.

In this chapter, I provide an analysis of the Kenyan state's response in addressing the issue of abortion. Drawing on the Critical African Feminist Perspective, I examine the neo-patrimonial nature of the Kenyan state to unearth how and to what extent this influences the interplay of gender discourses and political practices that shape the process of dealing with abortion. I argue that the Kenyan political elite attempt to ensure and increase their political power, popularity and legitimacy, by adopting a neo-patrimonial system of governance (see Chapter 2),

⁷³The government has in the recent years taken steps to extend access to emergency contraception and improve post-abortion care. At the time of my fieldwork in 2009, for example, there were numerous advertisements for emergency contraception.

which, because of its accompanying patriarchal norms,⁷⁴ tends to negatively affect women much more than other groups in the society. That is, although the political elite may not necessarily be opposed to abortion legalization, the patriarchal and neo-patrimonial nature and structure of the state has greatly influenced the state's response to the problem of unsafe abortion.

My analysis revealed many reasons why abortion has failed to command a higher agenda status, and why attempts to revise the colonial abortion policy have been unable to gain traction. The discussion in this chapter focuses on three sets of factors: (1) political obstacles emanating from the patriarchal and neo-patrimonial state structure; (2) women's marginalisation from the socio-economic and political arena and the resultant low priority given to gender issues, particularly women's reproductive health; and (3), the resultant contradictory abortion politics. Although I have made a conscious effort to deal with each of the three issues separately, there are significant overlaps between them, as will become apparent in the following discussion.

As a framework for examining the Kenyan state and its treatment of the abortion problem, I will begin by exploring the nature of the Kenyan state. Although this discussion may take the form of a Foucauldian genealogical analytics, my interest in the historical perspective stems not from a need to reconstruct the past, but from the need to understand and provide a context for the present Kenyan state. By locating traces of the present in the past (Foucault, 1979), I will endeavour to explain and contextualize the institutions of patriarchy and neo-patrimonialism, both common features of states in Africa (Lindberg, 2003), as well as demonstrate the development of a collaboration between patriarchal and state interests by which men are accorded patriarchal power in exchange for serving state interests. This has resulted in Kenyan women, like women in a majority of countries in Africa, remaining largely unrepresented in state governance (Tripp, 2001). A

⁷⁴ It has been noted that the state often uses patriarchy in establishing its power (Adams, 2005; Charrad, 2011). Patriarchy, understood to operate as part of patrimonial politics, is defined as including a combination of male dominance, extension of family symbols to politics, collectively useful marriage alliances, and expectations of reciprocal obligations (Charrad, 2011, p. 53).

direct consequence of such political exclusion from the state has been the sidelining, and perhaps disregarding of, women's issues such as abortion.

5.1. The Political Landscape in Kenya: Neo-patrimonialism, Patriarchy and Abortion

As noted earlier, the Kenyan state has opted to embrace a tactic of *strategic ambivalence*, exemplified by its failure to articulate a clear and consistent standpoint on the abortion issue. In an attempt to account for the Kenyan state's position on abortion, I will, in this section, focus on the evolution of neo-patrimonialism in Kenya, and how the accompanying patriarchal characteristics have hindered the development of coherent and consistent policies. I demonstrate that, as is typical of neo-patrimonial states in Africa (see chapter 2), the Kenyan state lacks a coherent set of positions on abortion, which produces unpredictable state behaviour and an environment of uncertainty for both state officials and citizens. In such an environment, all actors in the debate appeal to both formal and informal institutions in an attempt to overcome the insecurity produced by uncertainty. This, in a way, mirrors Chabal and Daloz's (1999) observation that politics in sub-Saharan Africa are characterised by the "political instrumentalization of disorder", wherein elites derive political and material gain from uncertainty and informality. Because such uncertainty enables contestation of legitimate positions (Leftwich, 2000), political and bureaucratic elites are unlikely to move towards greater institutionalisation of policy positions as this would rob them the benefit of changing their stands whenever it is considered necessary.⁷⁵

The neo-patrimonial bureaucratic state that dominated Kenyan political life after Independence established an all-powerful executive through a broad range of constitutional amendments (Thompson, 2009). Although colonial rule had been manifestly authoritarian, the 1963 Independence Constitution had some

⁷⁵ For example, Charity Ngilu, a past Presidential candidate and a Minister for Health, has often communicated different messages on abortion depending on the audience. In March 2003, for instance, she told a meeting of the International Planned Parenthood Federation that it was a gross violation of human rights to continue to deny women access to safe motherhood and abortion services (Coleman, 2003). Contradictorily, while addressing Parliament after the discovery of discarded fetuses in 2004, she is noted to have said that abortion would not be legalized and implied that the practice is morally repugnant and completely unacceptable (BBC News, 2004).

democratic safety-valves that resulted in wide dispersal of power within the country's political system (Gatheru, 2005; Mutua, 2008). Some of the features of the constitution included a bicameral parliament, a semi-federal system of governance that gave the regions relative autonomy from the central government, and separation of powers between the three organs of the state, among others (ibid.). However, given the ethnically divided nature of post-Independence Kenya, the leaders considered national unity and national development as the most urgent goals and consequently set in motion a series of constitutional amendments that also altered the existing democratic safety-valves (Mutua, 2001).

Constitutional amendments began in 1964 when Parliament made Kenya a Republic.⁷⁶ This amendment combined the powers and functions of the offices of Prime Minister and Governor-General and vested them in the new Office of the President (Ochieng, 1995; Omollo, 2002). With that change, the relationship between the President and Parliament also changed; it was no longer a system in which the President derived legitimacy from Parliament, nor one in which the President was constitutionally separate from the legislature, but one in which Parliament in reality came to derive its legitimacy from the President (Ocaya-Lakidi & Mazrui, 1973). This meant that Members of Parliament, and by extension their constituents, surrendered their constitutional rights to the Presidency. Thereafter, more constitutional amendments⁷⁷ not only effectively installed a dictatorial order but also saw the Presidency ascend in power relative to Parliament, the cabinet, the judiciary, the civil service, the local government and civil society organizations (Omollo, 2002). Some of the amendments gave the President the sole power of appointing judges, the Attorney General, the Chief Justice, nominated Members of Parliament and members of the electoral

⁷⁶ The 1963 Independence constitution had established a federal (majimbo) system of government with an executive Prime Minister and the British monarch as head of state (Mutua, 2001).

⁷⁷ Among the amendments that were made were: that which unified the offices of the head of state and the head of government in 1964; that which removed the constitutional protection against the redrawing of regional and district boundaries or the creation of new regions or districts in 1964; that which reduced the percentage required for Parliament to approve a state of emergency from 65 per cent to simple majority in 1965; that which removed the time limitations on state of emergencies in 1966; that which required Members of Parliament who defect or start a new party to seek a fresh mandate from their constituents in 1966; that which gave the President the authority to appoint the 12 nominated Members of Parliament in 1968; and that which allowed the President to waive the penalty (i.e., being banned from contesting elections for five years) on persons found guilty of an election offence in 1975 (Mutua, 2008).

commission (Andreasse, 1993).⁷⁸ The Executive's control of Parliament and the Judiciary meant that the Office of the President was in a position to manipulate and influence the functions of the only two branches of the government that pro-abortion activists could appeal to in order to have the law criminalizing abortion changed. Moreover, the unencumbered dominance of single party rule⁷⁹ exacerbated politics of patronage and sycophancy wherein individuals who displayed unwavering loyalty to the President were rewarded generously and those who did not were threatened with jail terms or detained (Mbondeniyi, 2008). As such, the President's opinion on all issues including abortion was likely to be adopted by politicians and civil servants who wanted to retain their positions. Seemingly, both Parliament and the Judiciary, among other government agencies, were reduced to mere rubber stamps for the Executive.

An important aspect of power centralisation is the role played by patriarchalism in providing cultural and political legitimacy of the extended authority. Political power became not only paternalised but also personalized, as both President Kenyatta and President Moi constructed themselves as *baba wa taifa* (father to the nation)⁸⁰ (Branch & Cheeseman, 2008; Ogola, 2005). In fact, President Moi went further by adopting the same familial metaphors with regard to his political party, which became *baba na mama* (father and mother) (Ogola, 2005). In the moral matrix of legitimacy, the President is not just seen as standing in the same relationship to Kenyan citizens as a father to his children (Schatzberg, 1980); rather, he is both a matriarch and a patriarch, who would nourish and protect his subjects if they offered him respect and obedience in return. In addition to legitimising the President's unwillingness to share power, the family metaphors

⁷⁸ This was done in 1986 when Parliament enacted Act No. 14, which was followed in 1988 by Act No.4 which imposed limitations on the independence of the judiciary. Sections 61(1) and (2) of the Constitution empower the President to appoint the Chief Justice and appeal judges respectively upon the recommendations of the Judicial Services Commission (JSC), which is also appointed by the President. The 1986 and 1988 constitutional amendments provided for the removal of the security and tenure of the Attorney General, the Comptroller and Auditor General, the judges of the High Court and the Court of Appeal.

⁷⁹ A 1982 constitutional amendment made Kenya a de jure single-party state.

⁸⁰ In 1981, for example, Moi sternly warned former Vice-president Odinga, then a potential rival by stating, "I am the only father, the only head of government of this country" (Schatzberg, 2001, p. 59).

also implicitly legitimised patriarchal rule in general, and paternal authority specifically.

These changes had consequences for women in general, and abortion politics in particular. In addition to entrenching and legitimating patriarchal norms, independent Kenya's paternalised patriarchal government also structured politics in a way that limited, if not prevented, the potential for women's leadership. Politics and the state were dominated by a predominantly male ruling political class that was also unapologetically masculinist (Nyokabi, 2008). In an attempt to achieve hegemony, the post-colonial state also used women's subordination and the ideology of male domination as unifying factors that could galvanise support from men as a group, alongside the adoption of neo-patrimonial politics. Thus, despite the low legitimacy and tribal politics that divided the ruling classes, a unifying male ideology helped shape alliances between African state institutions and patriarchal kin and family structures to perpetuate customary traditions that were discriminatory towards women.⁸¹ Using a similar argument, Fatton (1989) has argued that the marginalisation of women in Africa was a result of ruling class hegemony in post-colonial African states. Lacking legitimacy as a result of having inherited the colonial legacy of "bureaucratic authoritarianism, pervasive patron-client relations, and a complex ethnic dialectic of assimilation, fragmentation and competition" (Berman, 1998, p. 305), the ruling class concentrated on defending their interests at the expense of subordinate groups, among them women. In that process, gender was used as "a means to consolidate the closure of classes" which partly involved the ruling class blocking entry to independent and autonomous women by eliminating their independent groups of representation and by reducing their participation in decision-making (Fatton, 1989, p. 47-57).

This meant that post-colonial African leaders reneged on promises made to address women's concerns and gender equality during the nationalist struggles. In fact, rather than sharing with women the fruits of liberation, successive post-

⁸¹ A good example is the 1969 repeal of the Affiliations Act, which had allowed unmarried mothers to legally demand that the fathers pay for children they have outside wedlock. During debate in Parliament, male Members of Parliament who were otherwise divided on tribal politics employed a rhetorical strategy pitting the *traditional* against the *modern* and the *customary* against the *civil*, to galvanize support from men as a group and therefore institutionalized a law that preserved men's privileged legal position, while disempowering women (Thomas, 2003).

Independence governments across Sub-Saharan Africa sought to re-domesticate women and to construct the *real* African woman (as opposed to her Western *emancipated* counterpart) as the embodiment of *tradition* and a symbol of African nationalism (Soothill, 2007, p. 75). This construction was also generally accompanied by morality discourses that focused on women's sexuality, which became central to notions of nationhood and national belonging. The discourses idealised motherhood to the exclusion of women's other social and economic roles, and as Obbo (1989) has noted, discourses about the *proper woman* and her *reproductive potential* were also crucial to notions of national belonging. It is therefore very unlikely that such governments could propose or even support decriminalization of abortion.

The unfavourable impact of patriarchy and male domination in structures of power has been exacerbated by the neo-patrimonial nature of Kenyan politics. By creating an environment in which state power is sought for personal enrichment (Cammack et al. 2007; Dorman, 2006), the agenda of most politicians and political parties has been to gain power, which is sustained through the allocation of public positions to political supporters and the distribution of public resources amongst ethnic power bases that in turn provide political support and legitimacy (Dorman, 2006; Kebonang, 2005). Because these patron-clientele relationships often have a gender element in their composition and operation, and negotiations are normally done outside the public forum, just like during formal colonialism, Kenyan women as a group have largely been excluded as benefactors in state-linked clientelism (Tripp, 2001). Instead, male political elites at the national level maintain power through collusion with male leaders of sub-national ethnic and religious groups. Elections are therefore *unusually* competitive and some candidates engage in electoral malpractices such as violence and bribery to win (Kagwanja, 2003). All of these factors prevent women as a whole group – despite their class and ethnic differences – from exercising their constitutional right to vote and participate in politics.

Women's exclusion from patronage has meant women remain largely unrepresented in state governance, which has in turn allowed women's issues to be sidelined (Fatton, 1989). While there has been a sprinkling of women in Kenyan politics, they have been too few and have either been socialized into an

androcentric political ethos, or too connected to the ruling class through *femocracy* to be of significant use to the larger majority of women. Mama (1995b) defines femocracy as:

An anti-democratic female power structure, which claims to exist for the advancement of ordinary women, but is unable to do so because it is dominated by a small clique of women whose authority derives from their being married to powerful men, rather than from any actions or ideas of their own.⁸² (1995, p. 41)

To Mama, femocracies exploit the commitment of the international movement towards greater gender equality in the interests of a small female elite. In Kenya, femocracy has not only ensured that only elite women benefit from patronage networks, but also helped reinforce patriarchal social systems. This stems from the fact that the *femocrats* assume the right to represent all female citizens and their concerns, while in fact endorsing their husband's and/or male relations political agendas (Gouws, 2004). In addition to these women being unlikely to support issues with potential to embarrass the men they are associated with, they are also unlikely to support female candidates who may independently seek elective positions, and may actively campaign against them. For example, while speaking against the Presidential candidature of a female aspirant in 1997,⁸³ Zipporah Kittony, the leader of the largest women's organisation in Kenya and a relative of President Moi, urged women to vote for Moi because Kenyan women were not yet ready to rule the country (Aubrey, 2001). She told the female Presidential candidate, Charity Ngilu, that Kenyans still needed the *fatherly* guidance of the then president, Daniel arap Moi (Juma, 2003).

Clearly then, neo-patrimonial politics, which facilitates patriarchal privileging and advances men's interests, has had a negative effect on Kenyan women since issues affecting them are, as Connell (1994) has noted, articulated in relatively peripheral parts of the state apparatus. Moreover, since the Kenyan state is

⁸² It is important to distinguish this definition from the Western conceptualization. Eisenstein (1996), who first conceptualized the term *femocrats* in relation to Australia, argues that feminist bureaucrats representing feminist goals bring feminism into state institutions, thereby promoting the feminist gendering of policies. To her, Australian feminists succeeded in making women's issues like child care and domestic violence part of the mainstream political agenda.

⁸³ The female candidate, Charity Ngilu, has on some occasions supported abortion legalization in the country.

characterised by the cultural masculinisation of authority, women's place in the state is defined by men, who, because they benefit from the patriarchal structures as men, support the status quo. For, as Hartmann (1994, p. 570) has noted, "all men, whatever their rank in the patriarchy, are bought off by being able to control some women."

After this descriptive analysis of the nature of the Kenyan state, I will, in the next sections of this chapter, demonstrate how patriarchal ideologies, exacerbated by neo-patrimonial politics and its attendant norms such as corruption, have shaped policies concerning access to contraception, abortion and comprehensive sexuality education, and thereby impeded women's ability to make independent sexual and reproductive health choices. In line with the Critical African Feminist Perspective proposed as means of analysing the Kenyan state's abortion politics, I argue that neo-patrimonialism, coupled with patriarchal tendencies, have been behind the failure to effect policy changes on the abortion issue. I will show why the two bodies that could institute changes in this area, the Kenyan bureaucracy and the Kenyan Judiciary, have consistently failed to do so. Guided by information provided by my research participants and other secondary material, I examine how each of the facets of neo-patrimonialism – the concentration of political power, systematic clientelism, and the misuse of state resources (corruption) –, as well as patriarchy, have affected the abortion debate. I will begin by demonstrating how power concentration in the political elite, and more so in the Presidency has affected the government's ability to decriminalise abortion.

5.2. A powerful Patriarchal Bureaucracy and the Abortion Debate

The centralization of power in the executive as shown in the previous section has had a significant effect on the abortion issue in Kenya. This can be deduced from the following observations made by two pro-abortion participants in my research:

I do think that one of the biggest factors that undermines the status of women in Kenya has a lot to do with the fact that for twenty-four years during Moi's regime, women were ignored because this was the attitude of the President himself: that women were neither to be seen nor heard. You could see it in his government for he never appointed any women in his government or cabinet. (NSA7)

I was in a delegation of the Committee of Experts from the Kenya government to the second meeting of the experts that were working on the draft Maputo Protocol [Protocol to the African Charter on Human and People's Rights on Women in Africa]. At the time, we had no issues, unlike some countries that had put reservations on the issue of reproductive health among others. The draft went through and was adopted by Heads of States. Two years later, I asked the minister in-charge why the protocol had not been ratified. While answering the question in Parliament, this minister claimed that his ministry was working on it. But in private, he told me he was a Catholic and that he was uncomfortable with the abortion provision. I reminded him that the government had already committed itself, and as such, his personal opinions had no place. Unfortunately, our constitution does not factor in our commitment to international laws and therefore decisions in this country are made on the basis of personal convictions. So if a particular minister is a male chauvinist, nothing happens.⁸⁴ (NSA4)

In earlier sections, I have suggested that Kenyan elites have enjoyed enormous power over state apparatus and their personal opinions and preferences have often functioned as legitimate sources of social and political policies. As noted by NSA7 above, President Moi's opinion about women seems to have influenced their lack of participation in his government. In fact, the only time President Moi appointed a woman into the cabinet was just prior to the Fourth World Conference on Women held in 1995 in Beijing (Juma, 2003). It is possible to argue that the appointment was a result of shame arising from the fact that previous delegations to women's world conferences had routinely been led by men.⁸⁵ The reasons behind his exclusion of women from governance became evident when, while opening a regional women's seminar in Nairobi on March 6, 2001, he accused women of having little minds and therefore being non-achievers. In his words, "You [women] can achieve more, can get more but because of your little minds, you cannot get what you are expected to get" (Warungu, 2001). To him, it was not his sexist attitude that was responsible for women's exclusion; rather it was women's mental capacity. Apart from being an insult to women, the President's

⁸⁴ Although Kenya is signatory to the Protocol, it is yet to ratify it. Only 28 of 53 member states have ratified the Protocol (African Union, 2010).

⁸⁵ It is worth noting that the appointed female minister, Nyiva Mwendwa, was herself a member of the elite as she was the wife of a former Chief Justice, Kitili Mwendwa.

statement and opinion justifies discrimination against women as well as patriarchal domination.

Similarly, the powerful Cabinet Minister referred to by NSA4 also failed to ensure the Kenyan government's ratification of a Protocol that guarantees women access to safe abortion because of his personal religious beliefs. In a country where personal opinions of the privileged ruling class influence public policy, it is highly unlikely that a controversial issue such as abortion can muster support particularly in a community where, to win elections, leaders require not just support, but sometimes the endorsement of religious groups. For example, President Jomo Kenyatta aligned himself with Protestants, whereas President Moi was an active and *born again* member of the African Inland Church (AIC). The current President, Kibaki, is a Catholic and has on various occasions publicly expressed his opposition to abortion. All the three religious groupings do not approve legalised abortion.

However, I would argue that the Kenyan Presidents' and elites' public pronouncements and actions that suggest they are opposed to abortion are in fact primarily a political tactic intended to forestall the political fallout that could result from either complete enforcement of the law or abortion decriminalization. In the words of one research participant (NSA4), "the leaders want to have their cake and to eat it too." By publicly opposing abortion but also ignoring clandestine abortions, and even providing post-abortion care for those who need it, political leaders are able to appease both anti- and pro-abortion actors, but also, and more importantly, male constituents who are generally opposed to abortion decriminalization (Kumba & Muiruri, 2009). This is consistent with neo-patrimonialism, wherein unpopular and at times illegitimate leaders are often unwilling to jeopardise their political power bases by supporting policy issues that have the potential to undermine their popularity and legitimacy. As Cammack et al. (2007) have noted, insecure leaders in such states are usually more interested in maintaining their power rather than running the country. Consequently, they are likely to support solutions that are capable of delivering short-term political gain,

such as publicly opposing abortion,⁸⁶ instead of coherent policy-making and long-term development planning that could address the large number of deaths and health complications resulting from unsafe abortion.

The fear of losing support, as well as the need to maintain support from powerful interest groups such as Christians and traditionalists, can be said to be behind Kenyan leaders' overreliance on populist policies, and also explains their contradictory messages and actions on the abortion issue. In 1998 for example, President Moi, without consultation with policy makers, gave into pressure from religious groups⁸⁷ (*The Economist*, 1998) and shelved a Sessional Paper on family-life education even before it was debated by Parliament. If adopted, the paper could have provided mechanisms for the introduction of sex-education in schools. Unfortunately, although the benefits of sex-education in relation to unwanted pregnancies and unsafe abortion have been acknowledged world-wide, Kenyan schools are yet to provide it because of opposition from religious groups (Kabirua et al. 2010).

The ban on sex education in Kenyan schools, which persists to date despite the HIV/AIDS scourge, has resulted in a huge knowledge gap among school-going children and teenagers regarding their reproductive health. A research participant working for a state agency responsible for formulating and overseeing the implementation of population policies, strategies and programmes (SA10) explained how his institution's attempts to provide Kenyan young people with accurate information on their reproductive health needs and rights, as required by the Adolescent Reproductive Health and Development Policy (ARH&D Policy 2003),⁸⁸ were thwarted by religious leaders' representatives to the organisation. He explained that when his organisation was writing a reference book for youths

⁸⁶ In a country where more than 70 per cent of the population identifies as Christian and largely anti-abortion, this is certainly populist. This will be the focus of the next chapter.

⁸⁷ Catholic bishops and anti-abortion activists in Kenya have always been opposed to sex education being offered in schools. Following plans to introduce it, religious leaders led big demonstrations that included a public burning of condoms and other contraceptives in Nairobi (Kigotho, 1997). The religious leaders swore that no Catholic school would be allowed to offer sex education.

⁸⁸ The document can be found at http://hivaidsclearinghouse.unesco.org/search/resources/Kenya_Adolescent_Reproductive_Health_and_Development_Policy.pdf

and adolescents, religious representatives objected to the inclusion of a chapter on modern methods of family planning. After lengthy negotiations, the religious leaders agreed to its inclusion as an appendix.⁸⁹ This participant said religious leaders were able to influence the outcome after appealing to the President, who, being a Catholic, tacitly supported them. Although President Kibaki has publicly supported family planning, it is possible that his support for religious leaders' demand was political as he may have been wary of upsetting an important section of his supporters.⁹⁰ This becomes more significant when considered alongside the fact that this was the year of the 2005 Constitutional referendum and the President needed the support of clergy men to have the Draft Constitution passed. The President seems to have succeeded since, unlike the 2010 Constitutional referendum when they campaigned against the Draft Constitution, religious leaders in 2005 urged their followers to follow their own conscience when deciding on whether to vote for the adoption of the Draft Constitution or not.⁹¹

The lack of sex education, which in turn leads to ignorance about contraceptive methods, was identified by the majority of my research participants as being one of the prevailing causes of high unwanted pregnancy rates and consequent unsafe abortions. In fact, research in Kenya has also shown that around 85 per cent of girls aged 15 to 19 years and 72 per cent of women aged 20 to 24 years reportedly do not use contraceptives (Gathara, 2010). While a further 70 per cent of adolescents in Kenya reportedly engage in unprotected sex, a survey conducted in Kenyan schools found that a mere third of the male students and a quarter of female students knew that contraceptive pills have to be ingested by females and not by males, and even fewer knew that these pills have to be taken every day and

⁸⁹ It is important to mention that this research participant said that when his organization sought feedback on the reference book from students, they were surprised to find the appendix was the most popular.

⁹⁰ The First Lady, Lucy Kibaki, has consistently campaigned for sexual abstinence as a means of containing HIV/AIDS spread. She once caused controversy when, against government policy that promotes condom use, she urged high school girls to avoid using condoms. In her opinion, "Those who are still in school have no business having access to condoms. Those who are in university and are not married have no business having condoms in their halls of residence" (BBC News, 2006).

⁹¹ For instance, the head of a church of which I was a member said we were free to vote the way we chose. However, being a tribesman of the President, the clergyman advised us to also read the Draft Constitution carefully so as to notice the good things it had to offer.

not just prior to sexual intercourse (ibid.). It is therefore not surprising that a study by Taffa et al. (2003) found that 49 per cent of the female adolescents they interviewed had had sexual intercourse in the past, and that of these, 42.8 per cent had been pregnant at least once. The importance of these findings to the current research is that most of the pregnancies were reported as unwanted (ibid.).

It is, however, important to add that it is not just young people who lack knowledge about contraceptives in Kenya. A research participant working for a women's organisation (NSA12) had the following to share:

After the post-election violence at the end of 2008, we went to visit internally displaced women in Limuru during the International Women's Day. At that time, I was working with an organization called... and we were accompanied by two nurses. After we had given them general legal information on their rights, the nurses started discussing family planning methods. Those women were shocked and after the meeting, many women came to speak to the nurses privately because they wanted contraceptives. They did not know there were ways of preventing pregnancy!

This observation clearly suggests that for increased uptake of family planning services, awareness about the available services is paramount. In fact, recent research findings show that in Kenya, the likelihood of a woman using family planning services would be 26 per cent higher for women with knowledge of family planning services than those without (Oketch et al., 2011). A 2009 study on perceptions of family planning among low-income men in Western Kenya found that men also lack sufficient knowledge about sexual and reproductive health (Wambui & Alehagen, 2009). The researchers note that some adult men had no idea what family planning meant, with some saying it meant 'having children with some kind of plan' (ibid.). Coupled with the fact that condoms tend to be associated with extramarital affairs and are thus most commonly used outside marriage, it is not surprising that married women are significantly represented in unsafe abortion statistics (see Chapter 7).

Power concentration at the administrative level, in addition to leading to overreliance on populist policies, also leads to political interference in the public service. This is often easy because, as noted earlier, Kenyan Presidents and political executives have had the power to appoint all senior civil servants. This has had two major results in relation to abortion. On the one hand, public civil

servants function to please their appointing authorities, while on the other, because they normally do not owe allegiance to the citizens, civil servants generally have more incentive to act in favour of their private, as opposed to public interests. This factor may be behind the Kenyan state's treatment of reproductive health and, by extension, abortion as *business as usual* rather than as a crisis issue that it should be. One research participant (SA5) explained that because heads of government ministries (Permanent Secretaries) are political appointees, they often prefer to concentrate on curative services rather than preventive ones because these are more visible and are likely to improve their appointing master's political ratings. As such, difficulties in securing government prioritization of reproductive health care can be construed as having to do with political leaders' need for quick fix policies that also have the ability to deliver greater political impact. Unfortunately, because abortion, which is not only controversial but also highly contested, is unlikely to increase political popularity, it is never considered to be an emergency, unlike other health issues such as malaria, cholera, diarrhoea and, of late, HIV/AIDS. This participant (SA5) noted that the Kenya Service Provision Assessment Survey of 2004 had found that in the five years preceding the survey, the proportion of health facilities offering any method of family planning declined from 88 to 75 per cent. Unsurprisingly, the 2003 Kenya Demographic and Health Survey (KDHS) revealed increases in unmet need for contraception and high contraception discontinuation rates (Blacker et al., 2005). Moreover, due to the culture of bureaucratic authoritarianism and personalism in Kenyan politics, elite are able to influence and to concentrate on policy issues that are less controversial and those that would deliver greater political advantage to themselves.

At another level, the Kenyan elite's quest for power centralization saw it take control over autonomous bodies, among them women's organisations. President Moi, at the height of his power, ordered the affiliation of the *Maendeleo Ya Wanawake* Organization (MYWO), the oldest and largest national non-governmental organization for women, to KANU, the ruling party (Stamp, 1991; Tripp, 2001). As noted by a non-state actor (NSA7), the co-optation and placing of this organisation under the leadership of a fervent supporter of the ruling party not only introduced sycophancy but also allowed the state to have control of the organisational agenda, which in turn reduced its political role. Because the co-

option also involved older, less educated middle class women, it created what Amina Mama (1997, p. 148) calls “state feminism”, wherein the state is able to mobilise women on its own terms rather than offering them an opportunity for representation in governance. Nzomo (1996) has noted that ruling-party affiliated women’s organisations not only found it difficult to establish their own independent agendas, but their focus was narrowed down to a set of development issues such as nutrition, health, women’s morality, childcare and homemaking skills, in addition to dancing for the President and his supporters at political rallies. This situation obviously hindered Kenyan women’s organisations’ capacity to develop a strong pro-abortion movement, as has occurred in other countries such as the USA.

Additionally, because male politicians penetrated the organisation by ensuring their wives and female relatives assumed leadership positions, the organisation became completely apolitical since the women were unlikely to pursue agendas that were inconsistent with their sponsor’s interests. In fact, as will become clear in Chapter 7, women leaders actually used their newly acquired positions not just to demonstrate loyalty to the President, with the hope of getting nominated to parliament.⁹² Such leaders were therefore unlikely to engage in campaigns on issues such as abortion, which had the potential to “make them appear like American radical feminists and thereby ruin their chances of getting government appointments” (NSA4). For example, in December 2001, the ruling party KANU introduced a parliamentary motion aimed at reducing the number of female nominees to the East African Legislative Assembly (Nasong’o, 2005).⁹³ Three KANU-nominated female Members of Parliament, one of them the leader of *Maendeleo ya Wanawake* Organisation (MYWO), absented themselves from the vote while a female nominee of another party actually voted for the motion to avoid rubbing their political godfathers the wrong way.

⁹² The President was constitutionally allowed to nominate twelve Members of Parliament.

⁹³ The East African Legislative Assembly is an organ of the East African Community established under Article 9 of the Treaty for the Establishment of the East African Community. The East African Legislative Assembly has 27 selected members, 9 from each of the three partner states. Assembly rules require political parties to ensure that at least a third of their nominations to the East African parliament are women. The gender aspect proved inconvenient to the Kenya African National Union (KANU) ethnic/regional based nominations and the party sought an amendment to the rule, with the result that it nominated one instead of two women (Nasong’o, 2005).

Although the behaviour of the Kenyan women leaders is atypical and does not invalidate research which suggests that having women in politics may help solve problems that affect them (Maathai, 2006; Neuman, 1998), Kenyan women leaders' failure to question the rationale behind attempts to hinder women's political participation is intriguing. This is more so because a study conducted by Lawless and Fox (2001) concluded that Kenyan female political candidates expressed little interest in either prioritising or focusing on women's issues. Instead, women candidates' attitudes were found to reflect more accurately the attitudes of male politicians, much more than they did those of the general citizenry. The study also found that although a majority of the women candidates expressed their gender sensitivity and familiarity with the plight of other women, their priorities and attitudes did not seem to reflect any concern.

A likely explanation, as noted by a leader of a women's organisation, lies in the fact that almost all female political leaders are in one way or another associated with the ruling elite. This was said to cushion the women politicians from some of the life experiences of the majority of Kenyan women, such as unsafe abortion, with the result that the female leaders' pet issues such as inheritance, equal pay or equal access to employment, are less immediately pressing to a large pool of Kenyan women. This has led to the female leaders being viewed as embodying interests that are irrelevant to those of the majority of Kenyan women, since by class and by marriage to elite men, the women leaders' interests are those of the ruling classes.

However, unlike a non-state research participant (NSA3) who blamed female politicians for failing to champion women's rights, I would suggest that the Kenyan women leaders' failure to champion the women's agenda is related to the fact that in a majority of cases, the appointments of women to leadership positions is no more than political tokenism and patronage intended to serve elite interests. Consequently, the women leaders' political and policy influence is usually dependent on their connection to the head of state and to their nominating political parties, rather than on their seats in the legislature. As Njoya (2008) argues, for as long as Kenya's political systems and structures are guided by what he refers to as *flawed masculinities*, the few women who manage to get into politics are unlikely to alter gender relations since they get *malestreamed*. A lack of effective and

systematic gender analysis of the structural barriers to women's participation, coupled with the failure to support women's participation through capacity building at all levels, has meant that elite-led nominations fall short of any potential to effectively mainstream gender into political processes. For as Okeyo (2003) has noted, such steps do not necessarily amount to gender equality since they do not respond to the dynamics of the processes and institutional structures which breed gender-based discrimination and differentiation. In other words, it should not be assumed that placing women into positions of authority automatically translates into a move towards gender equality, justice and peace.

In this section, I have demonstrated how neo-patrimonialism has shaped the Kenyan state's policies towards abortion, as well as women's organisations' ability to pursue gender related issues. In the next section, I show why the judiciary has also not succeeded in decriminalising abortion in Kenya.

5.3. The Kenyan Judicial System and the Abortion Issue

When I asked a senior lawyer at the Federation of Kenya Women Lawyers (FIDA-K) if the organisation had considered using the law courts to demand decriminalisation of abortion, she explained that:

Using the judiciary would require two scenarios. First, there would need to be a pregnant woman or girl willing to come out and sue the state for denying her the right to a safe abortion. However, because of the antagonistic and sometimes violent nature of abortion debates in Kenya, no woman has been willing to do so. Secondly, attempts to discuss ambiguity in laws governing abortion with the Attorney General have often fallen on deaf ears although he has been ratifying all sorts of conventions for us. It is unfortunate that he is a renowned human rights advocate.

Although the Attorney General's hypocrisy is presented here as partly responsible for the lack of policy changes to the abortion law, the general Kenyan laws, and their conservativeness, are also seen as responsible for the judicial officers' opposition to and/or unwillingness to display creativity in decision making. In the above quoted lawyer's words:

Our laws are very retrogressive. They don't create an enabling atmosphere where you could read into the international instruments. The judiciary is

very conservative and they do not like to look at law in a progressive manner, unlike other jurisdictions where laws can be interpreted widely and rely heavily on international instruments. Our judiciary is very reluctant to do that.

Another non-state research participant and former Member of Parliament (NSA4) also noted:

Even though we are signatories to CEDAW and even to the Maputo Protocol, it is unfortunate that Kenyan laws are construed in such a way that unless we domesticate, which means introducing legislation, we are not held accountable locally. We are held accountable internationally but not locally unless either Parliament or the courts decide to open up that space because courts can also make laws. But our courts have decided to be very conservative on women's rights. Our courts are simply not adventurous enough. They just read the law to the letter and in a very plain and narrow way.

The above participants' claim that Kenyan courts have been discriminative towards women in interpreting laws is not contested. A widely known case is one in which the Court of Appeal decided that under Luo customs, a widow had no right to bury her deceased husband, as this was a prerogative of the members of her husband's clan (Stamp, 1991).⁹⁴ Such court decisions, as rightly noted by the above research participants, have served to re-emphasise prejudices against women, whether in criminal matters, in property matters, succession matters and in civil matters.

As noted earlier in this chapter, an amendment to the Independence Constitution led to the removal of the security and tenure of the Attorney General, the judges of the High Court and the Court of Appeal.⁹⁵ This obviously undermined the independence of the judiciary by allowing a serving President to directly assert control over judicial officers. In fact, it is no secret that the Kenyan judiciary, especially during President Moi's tenure, was not independent and judicial officers often had to be careful not to render decisions unpopular with the regime or backtracked once presidential displeasure became known (Mutua, 2001;

⁹⁴ Luo are an ethnic group in Kenya.

⁹⁵ This was done in 1986 when Parliament enacted Act No. 14 which was followed in 1988 by Act No.4.

Stamp, 1991). Therefore, because all post-Independence Presidents have been against legalised abortion, judicial officers, who have always served at the pleasure of the serving President, have been unlikely to favour judgements that would have made abortion accessible to women. I suggest that as a result of lack of independence, coupled with the judiciary being reflective of the general society wherein controversial issues and those affecting women are easily ignored, the Kenyan judiciary has failed to seek a constitutional interpretation on the legality of abortion in Kenya, as well as attempt to consolidate the multiple, unclear and conflicting laws that govern abortion.

For example, under Section 240 of the Kenyan Penal Code, “A person is not criminally responsible for performing in good faith and with reasonable care and skill a surgical operation upon any person for his benefit, or upon an unborn child for the preservation of the mother’s life, if the performance of the operation is reasonable, having regard to the patient’s state and to all the circumstances of the case.” This law can be interpreted as creating a lawful exception to illegal abortion, especially when looked at alongside Section 214 which provides that a child becomes a person when it has completely proceeded in a living state from the body of its mother, whether it has breathed or not, and whether it has an independent circulation or not, and whether the umbilical cord is severed or not. However, Sections 158 to 160 of the Penal Code, Cap. 63, spell out offences related to the performance of an *unlawful* abortion or miscarriage with both the woman and the person who provides the abortion liable for prison sentences of up to 15 years if found guilty.⁹⁶

There thus exists a clear ambiguity in the laws stated above. Although Section 240 of the Penal Code creates a lawful exception to illegal abortion, the provision is complicated by, on the one hand, the failure to provide guidance on the circumstances that may constitute the preservation of the woman’s life, and, on the other hand, by the fact that Sections 158–160 are prohibitive without also

⁹⁶ Cap 63 Laws of Kenya

defining what might constitute a *lawful* abortion.⁹⁷ This omission would certainly be confusing to both Kenyan women and medical providers and most probably has resulted in denial of access to safe abortion even when it would have been permitted under the law.

To elaborate the extent of this lack of clarity, a research participant (NSA3) made reference to, among others, the Nursing Council's Code of Ethics and the Professional Conduct for Nurses in which performing or assisting in illegal procedures such as procuring abortions was listed as a malpractice offense. Evidently, the code makes no mention as to when abortion may be legal. This is especially significant if one takes into consideration that in some areas of Kenya, the doctor-patient ratio is 1:129,999 (Mwaniki & Dulo, 2008). In such areas, nurses may often be the only medical health professionals available for the general public (*ibid.*), and without training or understanding of the law, these nurses may not be fully equipped to provide post-abortion care or related services to women and girls. As for doctors and clinical health officers, the legal perspective is generally absent in their training and so most of them remain ignorant as to the circumstances in which abortion could be legally offered. Strangely, the Sexual Offenses Act (2006) as well as the Ministry of Public Health's National Guidelines on Management of Sexual Violence provides for abortion if a pregnancy is a consequence of rape (2009).⁹⁸ This lack of clear definitions of when life begins, what constitutes a woman's life being in danger, and what the legal definition of abortion is vis-à-vis the medical definition, leaves both women and medical professionals confused and afraid of being hauled into court for breaking the law.⁹⁹

My research participants were of the opinion that the ambiguity in the abortion law could have easily been dealt with through a constitutional interpretation. Unfortunately, this has not happened because, as noted by a senior official of the

⁹⁷ In July 2004, for example, while answering a question in Parliament, the Minister for Health indicated that no government hospitals or health centres had recorded termination of pregnancies on the grounds of incest or rape in the last three months.

⁹⁸ Available at: <http://www.svri.org/nationalguidelines.pdf>

⁹⁹ It is however important to note that the ambiguity also benefits those health professionals who choose to provide abortion, since sustaining a case against them is very difficult.

Law Society of Kenya, “the Court of Appeal and the High Court are yet to be called upon to decide whether abortion is legal or illegal.” Moreover, since the country’s independence in 1963, the Kenyan High Court has not addressed the legality or illegality of abortion, and neither has the Attorney General elaborated on what should or shouldn’t be prosecuted under Kenya’s abortion law. This is more surprising because abortion related cases have often been dismissed. A widely known example is the court case which followed the discovery of 15 fetuses along Mombasa Road in Nairobi on May 26, 2004, in which a doctor and two nurses were arrested and charged with murder under Section 203.¹⁰⁰ Lady Justice Rawal however acquitted the accused doctor and his accomplices on the grounds that the *unborn children*, whom the accused persons were charged with murdering, were, according to Section 214 of the Penal Code, incapable of being killed. It is worth noting that instead of acquitting the accused, the judge could have sought to charge them using the provisions of the Criminal Procedure Code in Section 181(2) and (3) which provide for the following

(2) When a person is charged with murder or manslaughter of a child or with infanticide, or with an offence under section 158 or section 159 of the Penal Code (relating to the procuring of abortion), and the court is of the opinion that he is not guilty of murder, manslaughter or infanticide or an offence under section 158 or section 159 of the Penal Code, but he is guilty of the offence of killing an unborn child, he may be convicted of that offence although he was not charged with it.

(3) When a person is charged with killing an unborn child and the court is of the opinion that he is not guilty of that offence but that he is guilty of an offence under one of the sections 158 and 159 of the Penal Code, he may be convicted of that offence although he was not charged with it.

I would argue that it was not by coincidence that, firstly, the prosecution chose to charge the accused persons under Section 203 of the Penal Code which relates to murder and not Sections 158 to 160 which relate to procuring abortion and miscarriages. Secondly, it is unclear why the accused, after the dismissal of the murder case, were not charged with abortion related crimes. It is probable that it

¹⁰⁰ Republic-vs-Dr. John Nyamu & 2 Others, Nairobi High Court, Criminal Case No. 81 of 2004.

was a strategic decision intended to address the competing interests of the pro- and anti-abortion activists who were involved in violent clashes during court hearings (Rice, 2004). State judicial officers may have sought or were compelled to address both the interests of anti-abortion activists who had *emotionally* demanded that the health professionals be charged with murder, and the medical professionals who were outraged by the charges against the doctor and the co-accused¹⁰¹ (Mbugua, 2005). Seemingly, the continued ambiguity and ambivalence within various abortion laws serves state interests by providing an avenue through which they can somehow uphold the status quo. While the political elite, led by President Kibaki, would not have wanted to lose the support they enjoyed from religious groups and particularly the Catholic Church, they also would have been embarrassed if medical health professionals actualised their strike threat.

I am not oblivious to the fact that I am suggesting the presiding judge may have been compelled to balance the competing interests of the different actors on behalf of the state.¹⁰² But, as earlier noted, the Kenyan executive has a history of influencing court rulings in Kenya. Mutua (2001), for example, notes that:

The judiciary has been subservient to the executive. The judiciary has shown no ability or inclination to uphold the rule of law against the express or perceived whims and interests of the executive and individual senior government officials, their business associates, and cronies. The government has acted swiftly and expeditiously to discipline or dismiss individual judges and magistrates who occasionally have failed to carry out its wishes. The judiciary has ruled consistently in favour of the KANU elite and its supporters in cases involving their corrupt practices and political interests. (p. 98-99)

Furthermore, my argument becomes more credible when one considers that the Attorney General had, on various occasions, publicly said abortion was illegal,

¹⁰¹ During the first court appearance, there was a confrontation between religious groups, led by Father Ngugi, and a group of doctors led by the chairman of the Kenya Medical Association, Dr Stephen Ochiel (Mbugua, 2005).

¹⁰² The First Lady, Lucy Kibaki, for example, called for the doctor to be charged with murder and not abortion. This outraged medical officers who claimed that the case had been obscured by religious fanatics who were confusing medicine and religion. Medical health professionals argued that the accused persons should have been charged with carrying out abortions and not of committing murder (Rice, 2004).

although without detailing the circumstances in which it could be legally available (Mulama, 2004). For instance, soon after the discovery of the earlier referred to discarded foetuses in Nairobi, the Attorney General, while addressing Parliament, is noted to have said “I wish to state that in appropriate cases, where I have found sufficient evidence, I have prosecuted suspects found to have procured and/or attempted to procure abortion” (Mulama, 2004). The Attorney General’s claims are important for two reasons: first, instances of successful prosecution of abortion related cases are unknown. Secondly, by claiming that he had prosecuted suspects of abortion related crimes, it becomes evident that he was all along aware doctor Nyamu and the accused nurses’ crime related to abortion, yet they were formally charged with murder. The explanation for his actions may be inferred from his speech as he addressed the United Nations Human Rights Committee in March 2005. When he was asked if the Kenyan government had considered legalising abortion, the Attorney General explained that although some activists had been campaigning for legalization, there was also a very strong opposition lobby led by the country’s Catholic and Muslim communities. The Attorney General’s observation seems to imply that, as I have suggested, the state had no intention of mediating between the competing interests of the opposing groups. Rather, as is evident in his final statement “How this debate will end is anyone’s guess” (Lifesitenews, 2005). Seemingly, he was content in leaving the situation as it was.

In addition to unsuccessful prosecutions, the judicial failure to clear the ambiguity in Kenya’s abortion law has also led to the false belief that abortion is illegal under any circumstances. Research carried out by Mitchell et al. (2006) reported that most young people in Kenya were under the false impression that the law prohibits abortion entirely. In their study population, almost a third of students believed, incorrectly, that abortion was never permitted in Kenya, and another 14 per cent reported that they did not know whether it was ever legal or not. Lack of clarity has led to multiple interpretations with the result that women qualifying for therapeutic abortions are rarely able to access them in Kenya’s public hospitals and health clinics.¹⁰³ This is evidenced by the case of Ruth

¹⁰³Therapeutic abortions can be conducted to preserve the woman’s life under Kenya’s Penal Code, to preserve the woman’s health under the Medical Practitioners and Dentists Board’s Code

Njeri, who was gang-raped and impregnated during the 2008 post-election violence:

A couple of months after the incident, she reported to the health clinic within the camp [for internally displaced persons] that she has missed her period. She was tested, but the medical staff were evasive about the results although they continued counselling her. After six months, Njeri wanted to terminate the pregnancy but was not allowed to. (Rehal, 2009)

This denial is against the country's Ministry of Health Sexual Violence Guidelines,¹⁰⁴ which allow for abortion in cases of rape. The lack of clear, authoritative decision-making criteria forced Njeri to carry the pregnancy to term although, in her words, "I wondered how I could have a child whose father I did not even know, and who would be a constant reminder of my humiliation" (cited in Rehal, 2009). When she insisted on having an abortion, hospital staff told her it was too late and advised her not to hate the child because it was part of her, and that it was innocent.

In this section, I have sought to demonstrate that the abortion law in Kenya is ambiguous. This problem could, however, have been solved through a judicial interpretation to provide guidelines as to when abortion could be legally provided. While this oversight can easily be blamed on the lack of independence within the Kenyan judiciary, it should be noted that it is entirely consistent with neo-patrimonialism wherein state officials fail to invest in effective and systematic policy planning. They instead settle for policies that provide greater political impact, even if they may be oppressive to some less significant part of the population. By maintaining but not enforcing the abortion law, the state is able to appease both anti- and pro-abortion actors. In the words of one research participant, "since image is everything, the law, like a double-edged sword, is

of Professional Conduct and Discipline (Code of Conduct), and in some cases of rape under the Ministry of Health's National Guidelines on the Medical Management of Rape/Sexual Violence (Sexual Violence Guidelines) (Center for Reproductive Rights, 2010).

¹⁰⁴ The guidelines note that rape survivors should be given information on child adoption or termination of pregnancy as available options. In case the woman decides to terminate the pregnancy, counselling should be provided before and after termination of the pregnancy to prevent long term consequences of the pregnancy termination. Available at <http://www.svri.org/nationalguidelines.pdf>

used to cut both ways” (NSA7). However, as I demonstrate in the section that follows, corruption in Kenya is also a significant contributing factor to Kenyan women’s experiences of abortion.

5.4. Neo-patrimonialism, Corruption and Abortion Politics in Kenya

Corruption is the most talked about problem in Kenya (Menya, 2010). As such, it was not surprising that my research participants brought it up during our discussions on reproductive health and abortion, and specifically as a major cause of unwanted pregnancies and unsafe abortions. Corruption was identified as a major contributing factor towards widespread poverty in the country. On the one hand, poverty was said to expose women to unwanted pregnancies and unsafe abortions while on the other, poverty was identified as one of the main reasons some women and girls cannot access quality maternal care services. Additionally, corruption was seen as responsible for the hiring of incompetent civil servants who were incapable of fulfilling their mandates. This is evident in the following comment by a senior officer in the Ministry of Gender:

One of the major impediments to women’s health is the government. I don’t know what to say but because of infighting and a lot of corruption, money that is meant for certain services does not go to those services but ends up in people’s pockets. This denies poor people, and mainly women, access to health facilities. Because they don’t get the medical attention they need, mortality levels will continue to grow. I think ending corruption will help improve health for all and for women particularly. (SA1)

Although the above quoted participant does not say so, corruption is a general logical outcome of neo-patrimonial systems (O’Neil, 2007). The diversion of public resources by the political elite to service particularistic patronage networks through granting clients access to economic benefits in exchange for marshalling ethnic, tribal or clan power bases generally exacerbates poverty for those who are outside of state patronage. As earlier noted, because women as a group tend to be excluded from the political elite sanctioned patron-client relationships, they are generally more likely to be poor, in comparison to other social groups (Ellis et al., 2007).

Consequently, it is not totally unexpected that studies carried out by some of the organisations I visited during my fieldwork identify poverty and material

deprivation, a consequence of government inefficiency and corruption, as pushing women and girls into activities that expose them to sexual exploitation and survival sex. Poverty is seen as a critical factor in both causing unwanted pregnancies and motivating women's decisions to terminate a pregnancy. A 2003 study carried out by the Centre for the Study of Adolescence (CSA), which I visited during my fieldwork, found that 56 per cent of secondary school girls had exchanged sex for money to purchase items like cell phone airtime, chips, pocket money and even sanitary towels. A 2006 study by the Kenyan government and UNICEF also noted that 30 per cent of teens in coastal areas traded sex for cash (PlusNews, 2008). The study surprisingly further found that underage sex with tourists in exchange for money was also rampant, sometimes without protection, thus exposing the girls to unwanted pregnancies. This not only increases the likelihood of the girls having unsafe abortions, but also a possibility of sinking deeper into poverty if a child is born. A seventeen year old teen with a six-month old child is reported to have said:

I try to use condoms every time, but sometimes they refuse or offer much more money if we don't. If I am offered 300KSH (\$3) by a *mzungu* (white man) for sex with a condom, or 1,000KSH (\$15) for sex without, then I don't use condoms. I have to feed my baby. (Afrol News, 2008)

A different study in a different area also revealed that eight out of ten adolescents had engaged in sexual activity before reaching the age of twenty years. Thirteen per cent of 14-year-old girls confessed to having been pregnant and either had children or had procured abortions (Waiganjo, 2009). In Kisumu, a city on Lake Victoria in western Kenya, female fishmongers were reported to be sleeping with male fishermen to get stock to sell so as to make a living (IRINnews, 2010). A woman who had quit the business explained that:

Many women selling fish have died of HIV and many are sick; we have been living at the mercy of fishermen who demand sex before they can give you fish. We have resolved to only buy fish with money and not with our bodies. (IRINnews, 2010, p. 1)

Unsurprisingly then, research has shown that Kenyan women procure abortions because they associate mistimed entry into motherhood with negative socioeconomic and livelihood outcomes. The women resort to induced abortion

not just as a form of protection against shame, but primarily as a shield against poverty and loss of economic wellbeing (Izugbara et al., 2009).

Because of their social roles as caretakers, Kenyan women also encounter corruption which affects them much more directly. A research participant working for a state organisation (SA4) explained that many women are forced to pay bribes for things like accessing utilities, securing school enrolments for their children, obtaining business licenses, getting medicines, or even seeing a medical doctor. In such situations, poor women often cannot pay bribes and some are forced to pay with sexual services, thereby exposing themselves to the risks of unwanted pregnancies and the attendant need for abortion. Additionally, corruption was said to have made women suspected of abortion, as well as doctors, a *gravy train* for police officers who threaten them with arrest unless bribes are paid. At the time of my fieldwork in 2009, I attended a medical doctor's conference in which a nurse shared an incident that happened at her place of work:

One day, I was surprised when police entered the hospital ward and began harassing the patients, questioning one about the nature of her medical care. The patient told the police that she required an abortion because of foetal deformity. Even though that was the truth, the police officers confronted the doctor on duty and demanded a bribe. They only left after receiving some money.

It is however important to note that although healthcare providers have been victims of police harassment, research has also identified them as often engaging in corrupt practices. A study conducted by the Center for Reproductive Rights reported bribery as one of the obstacles to, and requirements for, obtaining care (Center for Reproductive Rights, 2010). For example, in a focus group discussion with young women in a Kenyan slum, one participant said, "The public hospitals will definitely ask for bribes when providing post-abortion care. They will threaten to turn you into the police unless you pay them" (cited in *ibid*: 91). At another focus group discussion in Mombasa, Kenya, participating women were in agreement that:

People charge money on top because it's illegal. If you want them to take care of you immediately, you need to pay a bribe in a government hospital, otherwise they'll take you to the ward and leave you there all day. You

bribe them so they don't call the police too (Center for Reproductive Rights, 2010, p. 90).

The net effect of corrupt health professionals has been to hinder women's access to post-abortion care for fear of harassment as well as lack of money to pay the required bribes. A 2012 study by the Population Council has also revealed that women seeking pregnancy related services in Kenyan hospitals are usually subjected to inhuman treatment ranging from denial of privacy, demeaning physical and verbal abuse, to forced female genital mutilation (Onyango, 2012). Pregnant women's experiences at the hands of health workers are identified as being partly to blame for the high number of women seeking the care of traditional birth attendants. Presently, just four in every 10 Kenyan women have children in a hospital or a health facility (ibid.). The report quotes a man who said he had paid a nurse 200 Kenya Shillings (3\$US) to take care of his wife at a birthing facility. However, without seeming to justify public officers' corrupt practices, it is important to view corruption in the context of deepening economic crisis, which may compel state employees who do not earn enough to sustain their livelihoods, to seek alternative sources of income.

The introduction of political pluralism in 1992 after decades of single-party rule did not change political structures in Kenya (Mutua, 1992a; 1992b). Unfortunately, contrary to the world's expectation, the democratization did not deliver good governance or economic reforms to reduce poverty (Young, 1999). Instead, even though the one party political system had been replaced with a more democratic, donor driven multi-party system, the dynamics of neo-patrimonialism, clientelism and "belly" politics continued (Kannevorff, 2008, p. 118). Obviously, adaptation to Western democracy did not change Moi's core methods of rule. Like other African leaders, President Moi continued to oversee a repressive regime of power abuse that left the majority of the population in gross poverty and neglect.

The 2002 general elections won by the National Rainbow Coalition (NARC) saw a resounding rejection of the Kenya African National Union (KANU) and Daniel Arap Moi's legacy of endemic corruption and mismanagement. Unfortunately, although the country experienced a significant economic recovery during the period between 2002 and 2007, the reform process soon ran into trouble as the

governing coalition disintegrated (Githongo, 2007). This reduced the government's commitment to change, and grand-scale corruption and mismanagement of public resources went on unabated (Githongo, 2007; Otieno, 2005).¹⁰⁵ As such, the Kenyan people continue to live in poverty as the political elite strategize to gain power during the next general election to be held in March, 2013. Such leaders are unlikely to be involved in debate on abortion, not just because it is considered petty, as will become clear in the next section, but more so because of its controversial nature.

5.5. Women, Patriarchal Neo-patrimonialism, and the Politics of Abortion

In the preceding sections, I have noted that neo-patrimonial logic and practices, coupled with patriarchal norms, have impeded both the political elites' and Kenyan judiciary's ability to conclusively deal with the issue of unsafe abortion. In this section, I concentrate on the effects of the collusion between Kenyan political structures and patriarchal processes and how these exert control on gender relations in general, thus making it difficult for women's experiences, views and ideas to be incorporated in policy decisions since their participation in politics is generally constrained.

Feminist research has shown that when women get into leadership and management positions, they can bring a different perspective on political leadership (Maathai, 2006; Thomas & Wilcox, 2005). Some scholars have argued that having women in governance could help solve problems that mainly affect women. For example, writing about women legislators in the United States of America, Neuman (1998) and Epstein et al. (2005) have noted it was only after women joined Congress that issues such as health care, child care and support, sexual harassment, domestic violence and gender-based wage differentials among others, were given priority. A non-state research participant seems to support this observation in claiming that:

Women's participation in governance will benefit society because women are more likely to press for laws that benefit families, women, children and marginalized groups. (NSA14)

¹⁰⁵ For example, at the beginning of 2004, the Kenya government granted a contract worth about \$US41 million to an entity that did not exist (Githongo, 2007).

This participant further elaborated that although women constitute half of Kenya's population, this is not reflected in senior Government positions. This is evident from the elections held in December 2007 in which only fifteen women were elected as Members of Parliament out of a total number of two hundred and ten. Another six were nominated as Members of Parliament by political parties which can lawfully nominate up to twelve members, making women's share of Kenya's parliament 9.5 per cent, up from 3.8 per cent in 2002 (Wilke-Laune, 2009). In the cabinet formed in April 2008, women were given seven ministerial and six assistant ministerial positions, out of a total of 90 (ibid.). Although the number of women in the cabinet increased from three cabinet ministers and four assistant ministers in 2008, the underrepresentation of women is evident. Women's exclusion from state institutions extends to the public service where only 30.9 per cent of those employed are women, 72 per cent of who are in the lower cadres (Kamau, 2010).

My research participants blamed the exclusion of women from governance and policy making positions for the consistent blocking of legislative initiatives intended to address women's issues, as well as the passing of legislation intended to protect male interests.¹⁰⁶ When I asked a former woman Member of Parliament to comment on why abortion, like many other problems affecting Kenyan women, remains largely unaddressed, she had the following to say:

Due to their insignificant number, Kenyan female MPs are unable to bring women's issues to the fore of the parliamentary agenda. Even when that happens, women's issues are likely to be trivialized or defeated, as has happened with the Equality, Domestic Violence and Affirmative Action Bills which were thrown out of Parliament because a majority of male legislators failed to support their enactment. Moreover, being majority members in Parliament has allowed men to pass laws that protect their interests such as the repeal of the Affiliations Act which required men to financially care for children fathered out of wedlock. (NSA12)

Two other participants also noted:

Many senior government positions are held by men. And it appears that they subscribe to international requirements just for the sake of winning

¹⁰⁶ A notable example is the repeal of the Affiliations Act in 1969, which required men to care for children born out of marriage.

votes because when it comes to real practice, the government doesn't do anything. For example, even though President Kibaki publicly declared that every sector of his government would have a minimum of 30 percent representation of women, this is not the case. This is why sexism is still live in government. (SA1)

We have female judges and they have helped. But all their judgments go to the Court of Appeal. And the Court of Appeal is largely male dominated and very conservative and only one woman is a judge. There should be seven judges in the court including the Chief Justice. For the last two years, there have been six judges and we have been campaigning that the position be given to a woman. Unfortunately, they would rather keep it vacant than appoint a woman. Women's lobbyists are still trying. Even in the USA, issues of reproductive health are very important. How you compose the highest court of the land matters because these are issues that are open to interpretation. When people say Kenya has become gender sensitive, we ask them to look at the highest institutions and if there are no women there, then Kenya has a long way to go. (NSA4)

These three research participants seem to suggest that a lack of political will and patriarchal tendencies on the part of Kenyan leaders, coupled with lack of women's representation in both government and the judiciary, are responsible for the sidelining of women's issues. The problem of lack of state access to women can be construed to lie in the fact that, because state institutions are predominantly controlled by men, state machineries operate with a massive bias towards men's interests. For the Kenyan elite, male bias has been institutionalised, sustained and legitimised because of a lack of significant and sustained protest from women. As a result, political leaders can comfortably make promises to women in order to win their votes, but have no obligation to keep the promises. For example, during the run up to the 2007 general elections, President Kibaki promised that 30 per cent of all public appointments and elective positions would be reserved for women. Raila Odinga, the current Prime Minister, on his part had said 50 per cent would go to women if he was to win the Presidential election (Kassilly & Onkware, 2010). Unfortunately, although both men are now in power, their pledges have not been fulfilled as women remain largely unrepresented.

A good example of how patriarchy and lack of political will to deal with gender-related issues plays out, and which was constantly referred to by my research participants, is evident in the way the Kenyan political elite treated the

Reproductive Health and Rights Bill 2008. In June 2008, a network spearheaded by the Kenyan chapter of the International Federation of Women Lawyers (FIDA), the Coalition on Violence Against Women, and the Kenya Medical Association had produced a draft Reproductive Health and Rights Bill 2008.¹⁰⁷ However, even at the time of my fieldwork in 2009, it had not been discussed in parliament.¹⁰⁸ Strangely, as noted by a senior lawyer at FIDA (Kenya), senior political leaders, among them the President, had already publicly condemned the draft bill even before it was officially presented in Parliament, and perhaps even before reading it. For example, at an event held to install a new Catholic Bishop, President Kibaki promised not to support the legalisation of abortion as proposed by the Reproductive Health and Rights Bill 2008.¹⁰⁹ He is alleged to have said, “I see no reason, now, or in the future, why anyone would want to legalize abortion in Kenya” (White, 2008). At the same public function, Mutula Kilonzo, Minister for Nairobi Metropolitan Development, also spoke against the bill, promising that if it reached Parliament, he would marshal the parliamentary forces to “shoot the bill down” (ibid.).

Notably, these leaders’ condemnation of the bill does not acknowledge or even consider the women-only problems that could be addressed if its recommendations were adopted. In fact, in their refusal to support the bill, the above noted politicians do not provide justification for opposition. I contend that the politicians are playing politics since, by opposing the proposed bill, they are able to appease anti-abortion actors while at the same time avoid offending pro-abortion actors by not openly criticising the bill. Notably though, if passed, the bill sought to address various reproductive health issues, including a push for easier access to abortion. It proposed, for instance, that a statement by a pregnant woman or any other proof that her pregnancy was a result of sexual assault, rape, defilement or incest could guarantee a legal abortion. The Bill also sought to repeal the Penal Code offences of attempting to procure abortion and of supplying

¹⁰⁷ Available at <http://www.strathmore.edu/pdf/reproductive-health-bill.pdf>

¹⁰⁸ The Attorney General moved it in Parliament on 16th October and the Bill received its first reading.

¹⁰⁹ It is important to pay attention to the context in which the pronouncements are made. The fact that it is a Church shows how important it is for the President and his supporter to appease religious leaders and their followers, obviously in exchange for political support.

drugs or instruments to procure abortion. Additionally, it allowed the termination of a pregnancy after consultation between only a health care provider and the pregnant woman if there was a risk to the woman's health, if the foetus would suffer from physical or mental abnormality, or if the pregnancy resulted from an assault, defilement, rape or incest. Of importance to the Kenyan situation, where most women undergo abortion because of economic hardship, the draft bill recommended the inclusion of extreme social deprivation and contraceptive failure as other grounds for legal abortion. Unfortunately, the Bill was never discussed after Parliament went into recess and its time lapsed. The Bill has never been reintroduced.

The absence of coherent policy-making and long-term development planning evident in the Kenyan government's treatment of the Reproductive Health and Rights Bill 2008 is a common trait of neo-patrimonial states. Participants in this research overwhelmingly felt that because policy decisions in Kenya are largely guided by the need to gain or retain power, partisan interests, and more specifically the interests of male powerful groups, such as traditionalists and religious leaders, often supersede those of the victims of unsafe abortion in the country. To the participants, if this were not the case, unsafe abortion, a major public health crisis accounting for over 35 per cent of Kenya's maternal deaths, could have been addressed. A non-state research participant (NSA7) was of the opinion that Kenyan leaders' unwillingness to ensure access to safe abortion is a result of their failure to identify with the problem. In view of the fact that unsafe abortion affects poor and younger women, as safe abortion is usually available for those that can afford to pay, she argued that leaders, including female Members of Parliament, may be too far removed from the problem to identify with it. Thus, as noted by socialist feminists, class determines who has access to safe abortion, and who does not. This participant's claim is supported by a 2007 study of Kenyan female politicians showed that the only period they focus on issues of social and gender equity is at the beginning of their careers (Nyokabi, 2008). After getting elected, their career progression is noted to be accompanied by an increasing integration into and orientation towards the *male mainstream* (ibid.).

As such, it is possible that the political leaders may not consider it worthwhile to commit *political suicide* for an issue that not only does not affect them directly,

but also may not be popular with male colleagues who might themselves be the female politicians' patrons. My research participants argued that the failure to identify with the problem of unsafe abortion had to be the reason behind the different consideration accorded to HIV/AIDS as compared to abortion. Because it affects both men and women, Kenyan leaders support programmes targeting HIV/AIDS to directly benefit themselves. In Kenya, married or cohabitating couples are the populations at the highest risk for HIV/AIDS transmission and acquisition (Kaiser et al., 2011). In fact, 44 per cent of all new infections occur in couples who engage in heterosexual activity within a union or a regular relationship (ibid.). Since it is most probable that a majority of policy makers and Kenyan elite fall into this category, their willingness to support HIV/AIDS programmes may be driven by self-interest.

Two additional factors that might influence Kenyan leaders' willingness to focus on HIV/AIDS but not abortion may be that, firstly, HIV/AIDS, after a period of being moralised has since come to be viewed and addressed as a public health and medical issue (de Waal, 2006). Since a similar shift in discourse has not happened for abortion, perhaps because of the controversy surrounding foetal life, abortion continues to be considered mainly as a moral issue in Kenya and so unsafe abortion and its consequences receive little policy attention. Secondly, major international donors, such as the United States of America, are often generous in providing funding for HIV/AIDS prevention activities, but the same has not been extended to unsafe abortion. In fact, during the Commonwealth Heads of Government meeting in Australia in 2011, British Prime Minister David Cameron warned that future development aid to Africa would be contingent on recognition of gay rights (BBC News, 2011). Although the prominence of the gay issue might lie in the publicity that the issue has received, it is unclear why the Western donors have also not threatened to withdraw aid to countries that continue to watch as denial of reproductive rights kills and maims thousands of African women annually.

The logic of *protecting one's skin* was also evident in conversations with male colleagues at the University of Nairobi during my fieldwork in 2009. While most of them said they did not support legalisation of abortion because "their wives would comfortably have sex with other men", they admitted to having paid for

their girlfriends' and/or female relatives' abortions. Their explanations for the selective support of abortion revealed their patriarchal attempt to control their wives sexuality while their support for other women's abortions exhibit their disdain at the prospect of having to support a relative's or girlfriend's child. These responses illustrate the kind of male hypocrisy that a former cabinet minister, Martha Karua, made reference to in 2004 when she argued:

Let us not bury our heads in the sand, let the hypocrisy attached to the debate end and let sobriety prevail. Let us not perform abortion for ourselves, our wives and daughters in private, but pretend to condemn the practice in public because it is politically and socially right to do so.... Let us respect the bodily integrity of women and not make their bodies a battle-ground. (Karua, 2004)

The fact that Kenyan men would be willing to support some women's abortions but disapprove of the practice for other categories of women suggests that their opposition to legalising abortion stems from their constructions of women's subjectivities as noted by post-structural feminists, rather than abortion per se. It is thus plausible to argue that, since their opposition is neither based on religion nor on tradition but on the assumption that women would be unfaithful, the men's opposition is intended to control the targeted women's sexuality. Furthermore, the fact that my colleagues support only abortions for which they have control over in terms of paying for them also points to patriarchal control as claimed by radical feminists (see Chapter 2).

Similarly, Kenyan legislators' interest in patriarchal control of women was cited by my research participants as having been the reason for their failure to support the Marriages Bill 2007,¹¹⁰ which was intended to make Kenyan marriages more gender equal.¹¹¹ Originally proposed in 1981, the bill was voted down by male politicians, who condemned it for granting women *too many rights*, especially the right to specify at the time of the marriage, whether or not a husband may choose

¹¹⁰ Available at <http://www.kenyalaw.org/Downloads/Bills/Unpublished/200703.pdf>

¹¹¹ The Kenyan law at the time recognised four types of marriage: African Customary, Muslim, Hindu and statutory marriages. Two of the systems, statutory law and Hindu, recognised only monogamous marriages while customary and Muslim laws also recognised polygamous unions (Mucai-Katambo et al., 1995). In polygamous marriages, females are not considered equal partners in matters pertaining to child custody in case of divorce or marital property upon divorce. It is for such reasons that the marriage laws have generally been considered discriminatory against women.

to take more wives in the future. Not surprisingly, Kenyan men in general were in support of the leaders' action, as evidenced by readers' comments to related newspaper articles. For instance, an anonymous reader of an online newspaper article expressed his/her support for curtailing women's rights in marriage by blaming divorce on gender equality in marriage.¹¹² To the individual, women's dependency on the husband would ensure long-lasting African marriages. In her/his words:

The high divorce rates in the West are due to the kind of laws that give women equal rights in divorce where property is divided in half even if the woman had 0 accounts. When women are given equal rights they end up being above men. In the West they benefit from divorce since they get alimony payments, child support and custody rights. Some get child support from so many different men. (AA1)

After stalling in 2007, the Bill was reintroduced in March 2009 and this time addressed legislators' concerns by eliminating a wife's right to stipulate the monogamy or polygamy of the marriage. However, in September 2009, faced with opposition from Christian and Muslim leaders, a cabinet meeting chaired by President Kibaki stopped debate on the draft Marriage Bill, Matrimonial Property Bill and the Family Protection Bill, to pave the way for further consultations with Members of Parliament and other stakeholders (Leftie, 2009).¹¹³ Unfortunately, the issue was ignored until it came up during parliamentary discussion on the Draft Kenya Constitution. In January 2010, members of the Parliamentary Select Committee on the constitutional review process exhibited their patriarchal tendencies when they voted to delete sub-clause 42(4) which sought to guarantee women and men equal rights at the onset, during, and at the dissolution of a marriage (Mathenge & Shiundu, 2010). This decision was reached despite protests from the five female members of the twenty-one member committee

¹¹² I came across this reader's comment as I was reading Kenyan newspapers online. The article's authors are Mathenge and Shiundu (2010).

¹¹³ According to the draft copies of the Bills, among the other proposals noted were that a couple would be deemed to be legally married if they cohabit for two or more years. The bridegroom and the bride would also be allowed to decide whether their marriage would remain monogamous or become polygamous at some stage, so long as they both gave consent in writing. The Bills further granted a widow the right to marry a person of her choice. The Marriage Bill also recognized marriages under the Islamic and the Hindu faith, while allowing the registration of customary marriages, as opposed to the current situation where no Act of Parliament provides for such marriages.

(ibid). It is possible that if there were more women in the committee as stipulated by liberal feminists who support women's equal representation, the result could have different.

The relationship between inequality in marriage and unsafe abortion in Kenya can be deduced from the fact that married women are significantly represented in cases of women receiving post-abortion care in public hospitals (Guttmacher Institute, 2008). One of the major causes is marital rape, which, according to the 2008-09 Kenya Demographic and Health Survey, affects 13 per cent of married women (Kenya National Bureau of Statistics, & ICF Macro, 2010). A women's organisation leader (NSA12) explained that during debate on the Sexual Offences Bill in 2006, Kenyan male Members of Parliament denied the existence of marital rape through claims that there could be no rape in African marriages. For example, Kenneth Marende, the Speaker of the Kenyan Parliament, said "Kenyans can still have sex with their partners even when they are asleep so long as they are married". Another male legislator, Paddy Ahenda, went even further by claiming Kenyan women were too shy to openly say "yes" to sex and usually say "no" unless it is a prostitute (IOL News, 2006). Notably, although this comment sparked protest from female members, with 12 of the 18 female legislators staging a walk out, it was met with applause and foot thumping by male members (ibid.). Seemingly, there is no recognition of the fact that condoning marital rape fosters a broader social acceptance of violence against women and legitimizes sexual assault as a form of political violence or social punishment.¹¹⁴ Additionally, legal impunity for marital rape fosters a culture in which violence against women is state endorsed or at least quietly accepted. This perhaps ascertains radical feminists' view that reproductive freedom for women cannot be guaranteed by a patriarchal state (Jaggar, 1983).

¹¹⁴ It is no wonder that during the 2008 post-election violence, sexual violence against women, in the form of individual and gang rapes, were widely reported. A commission charged with investigating the post-election violence found that the perpetrators often told victims the sexual violence inflicted upon them was punishment for belonging to a specific ethnic group or purportedly having supported a particular political party. The report is available at http://www.knchr.org/Portals/0/Other%20Reports/Waki_Report.pdf

The above male legislators' arguments ignore the connection between unwanted sex and unwanted pregnancies, and the consequent need for abortions. A 2009 report showed about 62 per cent of the women who sought post-abortion care services in Kenya were in a marriage union (Okwemba, 2009). Not unexpectedly therefore, a 2008 study by Emenike et al. (2008) showed that a slightly higher percentage of abortions in the country are procured by women who have experienced intimate partner violence than by those who have not. Considering that only 38 per cent of married women use contraception, high levels of unwanted pregnancies are to be expected (Okech et al., 2011).

The discussion preceding the passing of the heavily adulterated Sexual Offences Act in 2006 reveals interesting but otherwise intriguing gender and sexual politics in Kenya that I would like to share. I found it surprising when a female research participant (NSA12) explained that female promoters of the Sexual Offences Bill urged men to support its adoption because, "these days, boys and men are getting raped too." While rape is unacceptable irrespective of the victim's gender or age, I found the connotation that men should only care about the issue because it could happen to them disturbing. On one hand, it demonstrates the proponent's determination to have the Bill adopted, while on the other, it explicitly exhibits the amount of strategising demanded of proponents of gender equality given patriarchal norms and a lack of political will to pass legislation and policies that protect and secure the place of women. Perhaps, if there were more women in the Kenyan Parliament, the Bill would have been passed in its original form and more women friendly laws would also have been passed. As it is, Kenya's Parliament is a patriarchal institution imbued with deeply masculine values and norms, which is used by the Kenyan elite to pass laws that not only discriminate against women, but also legitimise these discriminations through codification. On abortion, a research participant (NSA8) was categorical that:

A Parliament that is capable of supporting heterosexual rape while criminalising consensual lesbian and gay sex cannot possibly let women control the products of such sex by allowing them the right to abortion.

This research participant's observations are reiterated by Sara Longwe's (1994) claim that gender inequality does not arise from any accidental or irrational imbalance. Rather, it is intrinsic to a system of patriarchal control, which is

operated by men for their own benefit. In contrast to other East African countries where the issue of women's representation has been dealt with through the adoption of affirmative quota policies, affirmative action motions have been defeated thrice in the Kenyan parliament.¹¹⁵ Seemingly, attempts to dismantle the patriarchal structure of the Kenyan state as advocated by socialist feminist theories of the state have not been successful (Dietz, 1987).

However, insufficient representation of women may not be the only reason for the Kenyan state institutions' failure to support women's empowerment in general and abortion in particular. Connell (1994) has noted that the gender regime of the state often reflects that of society. If that were the case, it can be argued that the Kenyan political elites' claims that traditional African culture and gender equality are incompatible result from the fear of an increasingly changing gender regime, and men in general are making attempts to retain patriarchal control over women in the face of social reform and modernisation. The resultant changes in sex roles and gender relations can be said to have given rise to actual and sometimes perceived threats to *reinvented* traditional male supremacy, leading to some aspects of women's autonomy, among them sexual rights and access to abortion, being frequently labelled as foreign, unAfrican and immoral. For example, increased cases of women dressed in trousers, miniskirts, or shorts being beaten and stripped by men for *dressing inappropriately* (read unAfrican) have been reported in various African cities including those in Kenya (Oriang', 2012; Muthengi, 2000).¹¹⁶ This observation is supported by African researchers such as Silberschmidt (2001), who suggests that African men have been feeling increasingly threatened for a variety of structural and ideological reasons, among them increasing unemployment and the growth of feminist ideas. In response to such trends, African men and elites have been known to pursue male self-interest

¹¹⁵A woman Member of Parliament, Phoebe Asiyo of Ford-Kenya party, first presented the Affirmative Action motion in Parliament in April 1997 but the motion was defeated in the male-dominated Parliament. In the year 2000, the Affirmative Action motion came up again through a female Member of Parliament, Beth Mugo of Social Democratic Party, but was again defeated. The Bill proposed that at least 33 per cent of the total number of seats in Parliament and Local Authorities be reserved for women. In 2007, a government-sponsored Affirmative Action Bill was thrown out through a technicality of lack of quorum all designed by the male MPs who claimed that the Minister for Justice, Hon. Martha Karua, did not consult enough (Kamau, 2010).

¹¹⁶ Surprisingly, before contact with Europeans, people in most Sub-Saharan Africa wore very minimal clothing.

through various avenues, among them the manipulation and instrumentalization of African cultural traditions that reinforce sexist and patriarchal prejudices (Soothill, 2007), but without acknowledgement that most of what is today considered culture was a construction of colonialists and African male elite (see Chapter 3).

For its part, the Kenyan state has been willing to succumb to the attitudes of male supporters and the traditionalists within society in order to maintain its own integrity and legitimacy. To appease men who are largely the constituents to whom the patriarchal state is responsible, state officials ignore or often condone injustice against women. For instance, while commenting on the controversy emanating from debate on the Sexual Offenses Bill, Moody Awori, at the time the Vice-President, is noted to have said, “the government supports the Sexual Offenses Bill, but we do not want to give men or women unnecessary advantages over the other and are ready to review the contentious areas” (Nation Reporter, 2006). The Vice-President’s comment makes explicit male leaders’ unwillingness to address gender discrimination, since the unnecessary advantages are not seen as a problem with regard to laws and policies that discriminate against women while giving undue advantage to men. Thus, as is the case elsewhere in Africa, Kenyan women’s rights are easily successfully attacked in search of consensus, more so because women as a group form a politically weak constituency. Political use of women’s rights as bargaining chips to appease contending forces has been found to be common in Africa (Owen, 2007).

Evidently, as would be argued by liberal feminists, Kenyan women’s underrepresentation in governance institutions has certainly had very detrimental results for them. A study by Kamau (2010) also affirms that the lack of a critical mass of women in Parliament is a major constraint on women politicians to effecting significant and positive change towards transforming the male-dominated culture of Parliament, public policy, and influencing resource allocation in a gender equitable manner. Although women’s limited participation in political leadership may be attributed in part to cultural conceptions of political leadership as a traditionally male role, the patron-client relations that characterise Kenyan patriarchal neo-patrimonial politics were identified as equally important. To my participants, the paternalistic construction of the state, as well as patronage

politics, impose structural constraints on the political participation of Kenyan women. Because negotiations in patron-client relations are often done outside of the public forum, the majority of women rarely become benefactors in state-linked clientelistic relations (Tripp, 2001). Moreover, since clients are usually expected to mobilise political support for the patron, the mainly male patrons often choose to do deals with male tribal king-pins who control and govern specific areas, and wield considerable power and authority. Such males, most them traditionalists who need the support of other kingpins or religious leaders to sustain their support base, are unlikely to support legal abortion.

5.6. Conclusion

In this chapter, I have demonstrated through a feminist analysis that the Kenyan post-independence state's attempts to ensure gender equality have been hindered by the political elite who have found dismantling the colonial framework of governance to be inimical to their own individual interests. This observation confirms liberal, socialist and radical feminists' theorisations of the state that present it as patriarchal and capitalist. In a manner reflective of these traditional feminists' claims, the Kenyan state excludes women from governance positions, which has in turn led to the establishment of a patriarchal state that pursues the interests of men in general, the ruling elite, and capitalists. Additionally, in line with the post-structuralist conception of the state as a site of struggle, the Kenyan state has many diverse actors, all of whom struggle to influence state policy and exercise control over aspects of the state. As such, the ruling elite is often engaged in bargains with powerful forces such as religious groups and traditionalists, and these bargains often disadvantage women as a group since their bargaining power and capacity is generally minimal.

I have shown that although these Western-based conceptualisations of the state partly explain the Kenyan state's treatment of the unsafe abortion issue, neo-patrimonialism has a very significant influence. The lack of political will to address gender issues in general and unsafe abortion in particular is due in part to the neo-patrimonial nature of politics. Because having control of the state machinery is the only way that the elite can ensure access to economic surpluses, patrimonial and clientelistic relations are generally important as they provide the

means to achieving political control and financial aggrandizement. As such, in their pursuit of power, the Kenyan ruling elite has been willing to use women's rights, and in this study women's right to abortion, as a bargaining chip when seeking political support from conservative religious and traditional groupings. That is, in order not to antagonize religious and traditional leaders, Kenyan political elites have covertly left the areas of sexuality and gender relations to quasi-religious-cultural interpretations.

Additionally, as a result of a convenient kind of collaboration between neo-patrimonial political structures and patriarchal processes, women have remained largely unrepresented in governance and public policy making, and therefore, women's issues and experiences have been easily neglected. Thus unlike Western states that subordinate women mainly in the interests of patriarchy and capital, in the Kenyan case, women's subordination is linked to needs to gain and/or maintain patrimonial and clientelistic relations that enable the elite to stay in power. It is my contention therefore that the strategic ambivalence of the Kenyan state's treatment of the abortion question cannot be fully understood without acknowledging the crucial role played by neo-patrimonialism. In the next chapter, I demonstrate the how the nature of the Kenyan state influences both the activities and discourses espoused by anti-abortion actors.

Chapter Six

Deploying Religion, Science and Health: An Analysis of Anti-abortion Discourses in Kenya

6.0. Introduction

The patriarchal and neo-patrimonial nature of the Kenyan state has enabled the legitimization and institutionalisation of anti-abortion discourses, and also led to the cultivation of networks of reciprocity between secular political leaders and anti-abortion actors. The resultant mutually supportive relationship on the one hand provides a means of ensuring and increasing political leaders' power, popularity and legitimacy, while on the other hand, it ensures the support of government authorities' for anti-abortion policies. In this chapter, I investigate the discourses and discursive strategies used by Kenyan anti-abortion actors in establishing the legitimacy of their stance. The ability of anti-abortion religious groups to influence public policy validates the Critical African Feminist Perspective's view of the state as a differentiated set of institutions, wherein various actors, among them the state, struggle to influence policy in ways that meet their interests.

The involvement of religion in politics has had a particularly detrimental impact on women's rights in general, and abortion rights in particular, since patriarchal religious ideals, buttressed by state support, have served to perpetuate women's inequality in both the public and the private sphere. This is more so because, as feminist researchers have noted, one of the main policy areas in which religions choose to intervene is that pertaining to women's issues, such as family policy, abortion regimes, and legislation pertaining to women's equality (Minkenberg, 2003). For instance, many Christian missionaries believed that African sexuality needed to be contained (Schmidt, 1990). In order to accomplish this, they enforced a new moral order wherein social, cultural, political and economic power became tied up with maleness, whereas domesticity and reproduction were promoted as the defining characteristics of femaleness (Becker, 2005). Because the new gender order erased traditional differences between men and women which had been based on rank or age (ibid.), it led to African women's

unprecedented dependence on men, and their subordination in all spheres of life including, social, economic and political (Marsh, 1978). Unfortunately, the missionaries' constructions of appropriate gender relations are today presented as *traditional culture* and therefore any attempts to institute changes are rejected with arguments such as the need to preserve *African traditions*.

The main anti-abortion actors in the debate are religious groups, with the major players being the Catholic Church, the Anglican Church of Kenya, the Presbyterian Church of East Africa, the Deliverance Church of Kenya, the Supreme Council of Kenya Muslims (SUPKEM), and other smaller groupings such as Human Life International and individuals.¹¹⁷ These actors, galvanised by the strong lead of the Catholic Church, the National Council of Churches of Kenya (NCCCK),¹¹⁸ and the Supreme Council of Kenya Muslims (SUPKEM), have managed to establish and institutionalise their opposition to abortion and have worked hard not just to keep the issue from public purview, but also to prevent major policy changes. They have done this by deploying four major discourses: (a) that abortion is murder of unborn children, (b) that abortion is detrimental to women's health, (c) that abortion is both immoral (d) that abortion is unAfrican. The policy preference within these discourses overwhelmingly favours more restrictions or the need to preserve current ones.

Ferree et al. (2002) have noted that the playing fields on which contests about abortion are waged usually influence the direction of the debate since they may provide either advantages or disadvantages to the actors. As such, in order to contextualize the Kenyan anti-abortion discourses, in the first section of this chapter, I provide a detailed characterisation of the anti-abortion actors. An introduction to the actors and the context in which they frame their discourses will assist in understanding their anti-abortion stance, as well as the factors behind their ability to influence abortion policy in Kenya. This section will highlight how

¹¹⁷ As in other African countries, there is a significant presence of contemporary Evangelical Christianities, especially driven from the United States of America. With about 1,337 American Protestant missionaries as of 1992, Kenya was host to the largest concentration of US Protestant mission personnel in Africa (Hearn, 2002). However, the majority of people who define themselves as Christian are likely to be affiliated to the mainstream Catholic or Protestant churches historically associated with colonial conversion (Maia, 2003).

¹¹⁸ The NCCCK is a fellowship of Protestant churches and Christian organizations.

the strategic choices exercised by anti-abortion actors in presenting their arguments take into account and are shaped by the material circumstances in which they produce the discourses.

In the second section of the chapter, I explore the four major discourses that are used by anti-abortion actors to oppose decriminalisation of abortion, in addition to illuminating the national and international contexts in which these discourses are articulated. At the same time, I will also focus on the policy implications of the anti-abortion actors' patterns of framing abortion. As Bacchi (1999) has noted, the construction and discussion of social problems such as abortion do not occur in a social vacuum. Rather, the interpretive process is profoundly influenced by historical, political and socio-cultural circumstances, all of which play key roles in the Kenyan case.

6.1. Anti-abortion Actors in Kenya

Religious groups constitute the major organised opponents of abortion decriminalization in Kenya. Although not all anti-abortion crusaders are necessarily religious representatives, it is worth noting that, firstly, an overwhelming majority of anti-abortion actors base their opposition on religious and moral tenets, and secondly, these largely anti-abortion actors have been successful in influencing state decisions in the sphere of sexuality and reproduction in general, and abortion in particular. The circumstances through which the religious groups have come to have such enormous political significance and power in the country's political field have to do with complex social and historical processes, such as colonialism, which are analysed in this section.

It is widely acknowledged that Christianity was an important component of colonial conquest and administration (Maia, 2003). Colonial conquest and control provided a political environment that facilitated missionary activity, while at the same time, missionary support for colonialism played an important role in providing religious justification of colonialism. The success of missionary evangelisation is evident in that, at present, 78 per cent of Kenyans consider themselves Christians. Of these, Protestants constitute 45 per cent, and Catholics 33 per cent (Otieno, 2010). With such a powerful presence, it is no wonder that

the church in Kenya has been an important player in influencing state interventions in the fields of reproductive health and abortion. As already noted, the anti-abortion movement in Kenya is a flagship for Christian morality and ethics, firmly placing the vast majority of Christians on the pro-life side of the debate.

Another significant factor contributing to Christian religious anti-abortion actors' ability to influence public policy relates to the particular forms of administration which colonial rule imposed. As noted in Chapter 4, colonial governance in Kenya, as elsewhere in Africa, used *indirect rule* through Native Authorities and the institution of the tribe to ethnicize and localise political control (Mamdani, 1996). *Native* administration over *tribal* areas, combined with the demarcation of missionary spheres of influence, created situations in which specific ethnic groups came to be associated with specific Christian identities (Maia, 2003; Ragsdale, 1986). As such, it was easy for missionaries to assume a mantle of cultural as well as religious leadership, allowing them to become champions of local issues. This positioning enabled Christian missions to consolidate themselves as patrons of specific ethnic groups, thereby winning their loyalty (Maia, 2003). This loyalty in turn enabled them to accumulate power and influence which considerably increased their status in society and consequently their ability to persuade people to adopt their stances, including those that sanctioned women's subordination (Moss, 1999).

The importance of religious missionaries was exacerbated by the colonial government's refusal to invest in state welfare programmes for Africans, instead leaving it to charities and missionary groups to exchange their spiritual wares for material support in education, health, or other social services (Sabar-Friedman, 1997; Strayer, 1978). Thus, in addition to numerical strength, religious groups' traditional involvement in the provision of education and healthcare in Kenya increased their ability to exert influence on the general public and on the state. After all, their involvement in the provisioning of social and educational services principle enabled religious groups to determine to a large extent, the contours and the policy of these public services (see Chapter 4).

Upon independence, the Christian religious denominations that had been recognised and privileged in the period of formal colonialism continued to play similar and dominant roles in directing the affairs of newly independent Kenya (Sabar-Friedman, 1997). Therefore, although Independent Kenya's Constitution established a secular state, religious organisations, through their historical control of social welfare and more specifically the education and health sectors, continued to influence the conduct of state affairs and the formulation of public policy (Hassan, 2008), mainly because of the state's inability to replace the church in the provision of such services. For example, there are 974 religious-based health facilities, 964 belonging to the Kenya Episcopal Conference (KEC) and the Christian Health Association of Kenya (CHAK), together providing 40 per cent of national health services (Mandi, 2006). Additionally, at independence, 90 per cent of the schools in the country were connected to one or other of the churches.¹¹⁹ In the aftermath of economic structural adjustment programmes, combined with the gradual erosion of state capacity and control since the 1980s, religious organisations have acquired the opportunity for more formal engagement with the state as significant agents in the facilitation of social and economic development. Moreover, Western governments and non-governmental organisations have often preferred working with religious organisations which are considered more accountable and less corrupt (Haynes, 2004; Hearn, 2002). Researchers such as Gifford (1998) argue that the Christian church is probably the most powerful institution in sub-Saharan Africa.

Religious groups' control of the education and health sectors has had significant effects on the abortion debate in the country. Because missionary education was used as an instrument of evangelism, the curriculum tilted strongly towards the Christian religion with scripture and the catechism taking a central position (Ragsdale, 1986; Sabar-Friedman, 1997; Strayer, 1978). As missionaries regarded traditional African religions and practices as primitive and heathen, education became a tool for denigrating and destroying indigenous political orders, resulting in the decline of traditional religious institutions and practices (Gellar, 2006; Moss, 1999). This included attacks on female practices, among them female

¹¹⁹ Kenya National Archives, Nairobi ES File. Education Statistics 1964-1966.

circumcision (see Chapter 3) and abortion. Although not encouraged, most traditional African communities allowed abortion in cases of unwanted pregnancies (Bleek, 1990). It was used when taboos were broken in cases of adultery, unsanctioned pregnancy during the lactation period, or when a girl was considered too young for pregnancy (ibid.). Colonial officers and missionaries condemned abortion and advocated its ban amongst African women in the hope of enforcing what they perceived to be women's roles, and also to facilitate the creation of a large pool of African labourers for European settler farms (Boddy, 2007; Thomas, 2000). It is worth noting that in emphasizing the restriction of African women's access to abortion, the colonialists were not driven by the need to protect the rights of the unborn, but were concerned about the unnecessary loss of prospective labour (ibid.).

Additionally, missionary education for the colonised people ensured that on the eve of Independence, men¹²⁰ with strong Christian roots¹²¹ emerged as leaders in many African countries, including Kenya. This could have affected the abortion debate in two major ways; firstly, the presumably *religious* political leaders were unlikely to support policies that could go against their religious beliefs, and secondly, the resultant political elite's association with religious organisations meant that the organisations came to command significant influence over Kenya's public life, especially because influential positions in the government were held by church lay members. For example, Charles Njonjo, the Attorney-General at the time of Independence, was a close ally of President Kenyatta and a lay member of the Anglican Church (Sabar-Friedman, 1997) and his anti-abortion stance was

¹²⁰ While colonial officers and missionaries were in agreement that Africans were to be given minimal education, women were particularly disadvantaged. On the one hand, the Christian missionaries were middle-class educated men with Victorian ideals and considered women only as wives, mothers, and housewives (Coquery-Vidrovitch, 1997). African women were thus offered domestic science and *home life* education, emphasising skills such as cooking, food preserving, clothes making and laundering. To justify their differential treatment of women, missionaries insisted that "all authority came from God through the image of the father...the Christian way called for the father to dominate his children and family head to dominate the private farm...considering it indecent for women to work outdoors" (Coquery-Vidrovitch, 1997, p. 144). By offering them an education that ensured their subordination to men, it was to be expected that women were unrepresented in most post-colonial governments.

¹²¹ Both President Kenyatta and President Moi called their churches the consciences and watchdogs of the society, while President Kibaki is noted to have stated that the church and the state are inseparable (Kulczycki, 1999).

public knowledge (Thomas, 2003).¹²² Although such appointments and consequent policy implications exemplify the close relationship between state and religion in Kenya, it is also a reflection of the neo-patrimonial and clientelistic nature of the Kenyan state, as discussed in Chapter 2, and demonstrated in Chapter 5. Since political leaders rely on patronage to access or remain in power, religious organisations and their elite personnel are often targets for cooptation into what may be referred to as *reciprocal assimilation* (Bayart, 1993; Gifford, 1998; Lemarchand, 1992). In the resultant *you scratch my back, I scratch yours* kind of relationship, religious leaders not only receive material and economic benefits,¹²³ but also support political leaders who are willing to pursue their interests, including the criminalization of abortion.

Although attempts were made after independence to make education relevant to the needs of the Kenyan society, the Ominde Commission of 1964 and the Education Act of 1968 both emphasized the importance of teaching Christian religious education in schools under the guidance of various churches which sponsored them (Ojiambo, 2009). By being able to influence the religious beliefs of young Kenyans, Christian religious leaders have not only been able to shape the opinions of a majority of Kenyans, but have also been able to maintain many devout followers despite growing secularisation. For example, because churches sponsor many secular schools, religious groups have been able to successfully resist the introduction of sex education (see Chapter 5), despite research showing that school-based programmes are an important element of efforts to improve the reproductive health of young people (Kirby et al., 1994; Kubicek et al., 2010; Strouse & Fabes, 1985). Religious influence in the school curriculum is evident in the following excerpt from an official school text book:

Young people who procure abortion often end up leading depressed, frustrated, unwholesome and lonely lives which usher them into a further abyss of depravity and drug addiction.

¹²² Interestingly, in 2004, Charles Njonjo, exhibited a change of stance as he is noted to have said he was in support of legal abortion (Njonjo, 2004). He argued that unsafe abortion was leading to unnecessary deaths of women and girls.

¹²³ Because religious actors suffer from the same economic problems as the general population, many strive to develop contacts with political elites with the hope of advancing their own self-interests (Haynes, 2004; Maia, 2003).

A girl will always know and live with the reality that she wilfully smothered and killed her unborn child. It is fairly haunting and dauntingly prickly to one's conscience. Hallucinations, dementia and ultimate madness are the likely consequences for the victims. (Otiende et al., 2001, p. 26)

Unsurprisingly, a recent study conducted by Adanji et al. (2010) on the attitudes of Kenyan in-school adolescents on abortion and unwanted pregnancies showed that the attitudes of the respondents were largely conservative with a majority of participants disapproving of induced abortion for school girls with unwanted pregnancies. The negative attitude, which is in conflict with the high rates of abortion among in-school adolescents (see Chapter 7), can be a result of the pervasive influence of Christian teachings as discussed above.

Religious organisations' direct involvement in the provision of education and healthcare has also meant that religious leaders are in contact with large numbers of people, especially in poor rural areas, where they may be the only providers. This not only allows the organisations to consolidate themselves as significant power brokers in the regions, but also makes it easy for religious leaders to set themselves up as local elites controlling key resources for the poor. Although most religious organisations claim to be apolitical (Maia, 2003), they are generally active social actors engaged in local and national political processes. This may be the reason behind religious leaders' enjoyment of significant credibility and legitimacy within the communities in which they work.

The ability of religious leaders to command respect and obedience from the general population was constantly referred to by most of my research participants as being behind political leaders' unwillingness to *rub them the wrong way*. State leaders were presented as being afraid that religious leaders could influence their supporters into voting them out of elected or appointed positions. For example, a pro-abortion non-state research participant, NSA3, explained that Cardinal Njue, the Catholic archbishop of Nairobi, had threatened to marshal his followers to vote out politicians who dared to vote for the adoption of the draft Reproductive Health and Rights Bill (2008), which sought to legalise abortion in specific circumstances (see Chapter 5). This participant explained that the fear of "being out of Parliament" made many legislators afraid of publicly supporting abortion

legalisation. At another level, religious leaders' power may emanate from their being personally and closely associated with ruling regimes, through the patrimonial and clientelist networks referred to earlier. Being a member of the state sponsored patronage network not only gives religious leaders opportunity to amass personal wealth, but also binds them to the state in a mutual project to maintain hegemonic domination over society (Haynes, 2004).

Another factor behind religious leaders' power relates to their proven ability to initiate political change. During the 1990s and early 2000s, Catholic and Protestant clergy actively participated in criticising the violations of human rights and the absence of fair and open elections during President Moi's regime (Haynes, 2004; Lynch, 2006).¹²⁴ At the time, attempts by the state to silence religious leaders failed because of the support they enjoyed amongst the general public and the fact that most of them had elaborate international and foreign links (Matanga, 2000). As one Kenyan cleric stated:

The absence of other organizations of a political nature (eg. political parties) that can confront the excesses of the state means that the church is the only nationwide body which because of its institutional strength and its sense of obligation for public morals and social justice can speak and act in implicitly political ways. The social evils of our time (eg. corruption, political patronage in employment, interference of the state with basic human freedoms, electoral rigging, detention without trial, torture, gagging of the press etc.) are so great...that Christians with any compassion cannot be indifferent to or complacent about the effects of such evils upon human lives in Kenya. (*The Nairobi Law Monthly*, as cited in Sabar-Friedman, 1997, p. 30)

Religious leaders' relentless pressure, in a context where churches were virtually the only formal organisations with the capacity to mobilise large sections of the population without recourse to government control, eventually forced President Moi to retire and to hold fair elections. In addition to endearing religious leaders to the general public, this also demonstrated to political leaders the potential power of the Church as both a central mobilizing force and the only independent

¹²⁴ Although this may seem like a contradiction to the earlier noted close working relationship between the political elite and the clergy, increased abuse of human rights and state-manipulated tribal clashes by President Moi made it impossible for church leaders to remain silent (Adar, 2004). However, even amongst the members of the clergy, only a handful were willing to openly criticise the government.

organization capable of creating solidarity within a multi-ethnic Kenyan society. The fear of religious leaders' fury may thus be construed as being behind Kenyan political leaders' use of religion as a tool for strengthening their legitimacy among the constituents, a majority of whom are religious. Such leaders are unlikely to publicly support the decriminalisation of abortion, although they may actually be pro-abortion at a personal level. It is probable that this was behind some of my research participants' continued need for reassurance that the information they shared, especially in favour of liberating abortion laws, was to be used only for my thesis and that it would not find its way to newspapers.

In this section, I have argued that religious organisations, which form the bulk of anti-abortion actors, command significant power over political opinions in Kenya. I have further provided an analysis of the factors behind their ability to wield such power. In the next section, I provide an in-depth analysis of the discourses used by anti-abortion actors in Kenya, and explore the arguments that they raise in arriving at their understandings of the scope and nature of the abortion problem. At the same time, I demonstrate how the neo-patrimonial nature of the Kenyan state influences, or is influenced, by the discourses espoused by anti-abortion crusaders in Kenya.

6.2. Anti-abortion Discourses in Kenya

Anti-abortion actors in Kenya present abortion as unacceptable because it is murder of unborn children, is detrimental to women's health, is immoral, and unAfrican. These views of abortion points towards an anti-abortion policy recommendation, while at the same time condemning not just women who have abortions, but also those who may support abortion legalization. I discuss these discourses below.

6.2.1. Religious and Foetal Life Anti-abortion Discourses

Religious and foetal life discourses are the most commonly invoked anti-abortion discourses in Kenya. It was difficult to untangle the two because they were

referred to simultaneously and used to reinforce each other.¹²⁵ The fundamental issue for those using these discourses is the sacredness of human life. Within this frame, the foetus is presented as an unborn child and abortion, irrespective of any mitigating circumstances, is the taking of a human life. By framing abortion in terms of protecting human life, Kenyan religious and foetal life discourses express support for an anti-abortion policy, as is evident from the following anti-abortion research participant's comment in defence of foetal life: "The church is against abortion because abortion destroys and has no respect for the sanctity of human life" (RA1). In opposing abortion, this participant finds justification in a Christian religious master frame,¹²⁶ which draws on conservative religious ideologies and Biblical scripture. Other anti-abortion participants, more so the Church hierarchy in association with organized groups and individuals, also regularly used specific references to doctrinal sources such as the Bible and statements by the Vatican to affirm the sanctity of life. Rev. Peter Karanja of the NCCK,¹²⁷ for example, said:

Life begins at conception, when the ovum is fertilized by the sperm. Refer to the following verses in the Bible: Job 31: 15; Psalms 139: 13 – 16; Isaiah 44: 2; Isaiah 46: 3 – 4; Isaiah 49: 5; Jeremiah 1: 4 – 5; Luke 1: 41 – 42, 44. In all of them, God is referred to as having made the person in the womb, at conception.

The above quoted Book of Psalms, which states, "For it was you who created my being, knit me together in my mother's womb", and the Fifth Commandment, "Thou shalt not kill," were consistently invoked in anti-abortion actors' attempts to reiterate the humanity of the foetus and the unacceptability of abortion.

There are two important points worth noting with regard to foetal life-focused discourses. Firstly, given Kenya's colonial political history and culture as discussed earlier, religiously justified foetal life discourse is the most dominant in the country and receives ample political and popular support. Secondly, the policy

¹²⁵ Research participants who opposed abortion on foetal life tenets justified their opposition on religious grounds.

¹²⁶ Master frames can be conceptualized as general symbolic frames that are culturally resonant to a particular situation (Swart, 1995). For more information on master frames, see Snow and Benford (1992).

¹²⁷ The Reverend's office also provided a written statement which he had used in an earlier press conference.

tendency within this foetal right to life frame overwhelmingly favours more restrictions on abortion or the need to preserve and enforce the current laws criminalising abortion. Below, I will elaborate on these factors while providing examples of how they have influenced the direction of the debate.

As noted earlier, the neo-patrimonial nature of Kenyan politics has, on the one hand, resulted in a lack of clear separation between the Church and state as political and religious leaders tend to be involved in mutually beneficial patrimonial and clientelist relationships. On the other hand, the relationship has legitimised the invocation of religion, and more specifically Christianity, on issues of public policy. The former President Moi, for example, while explaining his anti-abortion stance argued that abortion has no place in Christianity. He is noted to have said that “as a Christian, my conscience cannot allow me to support a law that leaves so much leeway for abortion to take place” (Mkawale, 2010). The use of religion is enabled by the fact that a majority of Kenyans identify themselves as Christians, and as such, the discourse of foetal life as a *sacred canopy* used by anti-abortion actors receives general acceptance as it resonates within the larger society. This being the case, political leaders and policy makers also articulate this discourse because they may themselves be religious, or, alternatively, they are persuaded to support the majority view.

Furthermore, in a country where access to both power and economic wealth is dependent on patrimonial relations, support from religious leaders, and by extension their adherents, is likely to be an important contributing factor to retaining or gaining power. As such, those intent on getting voted in or appointed to powerful positions are likely to be unwilling to support issues the church may be uncomfortable with. In fact, this may explain why Kenyan leaders, both political and public civil servants, seem not to hold fixed personal opinions on abortion but instead express different opinions depending on the audience. For example, in 1999, the Permanent Secretary in the Ministry of Health, Professor Julius Meme, when opening an African regional workshop for journalists on law and reproduction, noted that:

I have seen so much misery at the Kenyatta National Hospital...where women with abortion-related problems have died and others lost uteruses. There is no doubt the existing laws are colonial and too strict in the

modern society (Ngwiri, 1999, as cited in Center for Reproductive Rights, 2010, p. 11).

Although the Permanent Secretary's call to legalise abortion was supported by pro-abortion organisations, anti-abortion crusaders, and specifically the Catholic Church, were enraged and called for his resignation (*Daily Nation*, 1999). But despite support from the pro-abortion organisations, the Permanent Secretary later retracted his statement after the Vice-President, Professor George Saitoti, publicly declared that, "Abortion is against the sanctity and dignity of human life and should never be legalised" (*Nation Correspondent*, 1999).¹²⁸ Considering that Permanent Secretaries are political appointees in Kenya, Professor Meme undoubtedly withdrew his support for legalised abortion in order to safeguard his job.

To ensure the continued dominance of their anti-abortion foetal life-focused discourse in the country, anti-abortion actors have consistently sought to have their opposition to abortion entrenched in public policy. During the National Constitutional Conference held in 2004,¹²⁹ for example, religious leaders successfully¹³⁰ resisted attempts by pro-abortion activists to have the draft Constitution provide for abortion and reproductive health rights. Later on, when the abortion issue was reintroduced by the proposed Reproductive Health and Rights Bill (2008) which sought to have abortion legalised in specific circumstances, Cardinal Njue issued a pastoral letter on 28 September 2008 warning the government against passing the said Bill. The letter read in part:

¹²⁸ It is important to note that the Vice-President, who was also the Minister for Planning and National Development, made the comments at a Catholic Church service in which a priest was being ordained.

¹²⁹ The National Constitutional Conference was convened on 12 January 2004 to deliberate on and produce a draft Constitution which was to be subjected to a referendum. On 15 March 2004, delegates to the conference adopted the Draft Constitution of Kenya, 2004. The referendum was held on 21 November 2005 but the proposed new Constitution was voted down by a 58 per cent majority of Kenya's voters.

¹³⁰ Notably, the consequent Draft Constitution prohibited abortion in principle but left open the possibility for Parliament to develop legislation that could expand the lawful grounds for the procedure.

Abortion is not merely the removal of some tissue from a woman's body. Abortion is the removal of a living "thing" that would become human if it were allowed to remain inside the woman's body. Abortion is the destruction of an unborn baby. Pregnancy is the period for this new human life to mature, not just to "become human". It already is human. This is why the Church considers abortion the killing of a human being, and why the Second Vatican Council called it an "unspeakable crime." I remind you all to maintain the utmost respect for human life, from the time of conception. Even under threat, never use your knowledge to do what is contrary to the laws of humanity.

As earlier noted, the Cardinal, like other anti-abortion actors, makes reference to various sources, among them the Vatican, to emphasize the humanity of the human foetus.

Similarly, when in 2009, negotiations on a new Constitution resumed after the 2004 draft was rejected in a referendum, religious leaders and their anti-abortion supporters again insisted that a clause specifying that life begins at conception be included. They were categorical that Kenya's Constitution

Should be clear on the sanctity of the human life, ensure life is properly safeguarded and protected. A good constitution should be clear on rights and duties, and where life begins and ends. Life does not hang in the air; it begins and ends somewhere. There can be no legislation that says otherwise. (Mathenge, 2009a)

Considering the already alluded to power wielded by religious leaders and the fear that they may scuttle plans for a new Constitution, a clause meeting their demands was added. A pro-abortion research participant (NSA7) explained that:

The original draft Constitution by the Committee of Experts¹³¹ made no reference to the definition of life or any provision with reference to abortion. But when the draft was handed to the Parliamentary Committee, the Catholic Church and the NCKC persuaded the politicians to include new subsections; one recognizing that life begins at conception and the

¹³¹ The Committee of Experts was the main technical organ in the Constitutional Review process. It comprised of nine experts and two ex officio members who were nominated by the National Assembly and appointed by the President. The committee was mandated to finalize the Constitutional Review process and deliver a new constitutional dispensation for Kenya.

other stating clearly that abortion is not permitted, unless in the opinion of a registered medical practitioner, the life of the mother is in danger.

It is important to note that, firstly, the Parliamentary Select Committee that added the clauses recognising life as beginning at conception was made up of Members of Parliament, and secondly, religious representatives began to acknowledge pregnant women in their anti-abortion discourses for the first time. These two factors can be accounted for if one keeps in mind that, in agreeing to overrule the Committee of Experts' decision not to define where life begins in the draft Constitution, the Members of Parliament in the committee were keen on appeasing religious leaders who had threatened to campaign against its adoption in the forthcoming referendum. Religious leaders, led by the NCKC and the Catholic Church, had threatened to reject the draft constitution if the Bill of Rights did not define that the life of a person begins at conception and ends at natural death. Reverend Peter Karanja of the National Council of Churches, for example, warned:

Should the harmonised draft remain as it is without defining when life begins, we shall explore legitimate options as stipulated under the Kenya Constitution Review Act, 2008 to seek amends. What is clear is that this issue needs to be taken seriously as it will definitely take centre-stage with regards to the referendum. (Anyangu-Amu, 2009)

Although the willingness of Kenyan Members of Parliament's to give in to the religious leaders' wishes could have resulted from their unwillingness to sacrifice support from a rather large Christian constituency, the importance of a new Constitution for the Kenyan elite cannot be overlooked. In the aftermath of the 2008 post-election violence, one of the major decisions reached between Kenyan leaders and international peace mediators¹³² was the writing of a new Constitution. For the Kenyan elite, therefore, the adoption of the draft Constitution was not a commitment just to the people of Kenya, but also to the

¹³² The international mediation team was under the leadership of former United Nations Secretary General, Dr. Kofi Annan, as key negotiator, acting on behalf of the African Union's Presidency together with Graca Machel for the AU's African Peer Review Mechanism, and former Tanzanian President Benjamin Mkapa for the AU's Forum of Retired African Presidents.

international community which was closely monitoring the process.¹³³ It is therefore plausible to argue that in agreeing to disagree with the Committee of Experts, the members of the Parliamentary Committee were executing the wishes of the political elite who were keen on having the new Constitution passed. Moreover, for President Kibaki, a new Constitution provided a chance for a worthy legacy,¹³⁴ while for the Prime Minister, Raila Odinga, delivering a new Constitution would benefit his future campaign for the Presidency. Thus, as noted in Chapter 5, Kenya's patriarchal political elite were willing to sacrifice women's access to safe abortion in order to make political gains.

It is important to note that religious leaders' request to have anti-abortion clauses in the draft Constitution for the first time acknowledges the acceptability of abortion in instances where pregnancies threaten women's lives. While this may appear to be a shift from their earlier wholesale condemnation of abortion, I contend that the anti-abortion actors were merely strategically ignoring the fact that the law as it was, already provided for abortion in those circumstances. Unfortunately for them, because the public debate on a new Constitution had enabled many people to become aware of the abortion law provisions at the time, the religious leaders had no other options but to recognize the need for abortion on health grounds. However, it can also be argued that the religious leaders' apparent interest in women's health was intended to attract voters during the referendum, rather than genuine concern for women. As I will show in a later section of this chapter, religious leaders in Kenya also oppose abortion with the argument that abortion negatively affects women's health. Thus, just like political leaders, the religious leaders can be seen as playing politics with women's lives and health.

The foetal life discourse and more specifically the claim that life begins at conception was however not present in all religious anti-abortion discourses. In what appears to be an interesting twist on the foetal rights discourse, a senior

¹³³ Both the European Union and the American government were key supporters of the adoption of the draft Constitution. In fact, the American government not only provided funds for that purpose but the American Ambassador in Kenya actively campaigned for its adoption (Barasa & Doughman, 2010). The American President is also said to have sent the Vice President, Joe Biden, to impress upon the Kenyan President and Prime Minister the importance of the new Constitution (ibid.).

¹³⁴ President Kibaki was serving his final term in office.

academic scholar and Sheikh of the Supreme Council of Kenya Muslims¹³⁵ explained that although the Koran does not encourage abortion, any woman with valid reasons is allowed to have an abortion during the first four months of pregnancy. In his words:

All Muslim scholars agree that the foetus changes to a human being after 120 days of conception. But after the stage of ensoulment, abortion is completely prohibited except where it is imperative to save the mother's life. (RA8)

Further, while the Christian anti-abortion leaders and their supporters insist that abortion is unacceptable under any circumstances, the Muslim scholar said Islam allows abortion on medical, health or social grounds. He elaborated:

Health concerns that are permitted include when a woman conceives and, according to doctors, she cannot give birth. Here, abortion is permissible, otherwise, the pregnancy will take a toll on her health and endanger not just her but also the unborn baby. Medical reasons include when a woman has complications like a heart disease and has been warned against becoming pregnant. In cases of pregnancies arising from rape or incestuous relationships and other similar traumatising conditions, Islam allows such babies to be aborted before the fourth month. By doing that, Islam takes care of the social implications such a baby could have on the woman. Whenever she looks at the child for the rest of her life, it will remind her of her ordeal. (RA8)

Although the Sheikh's interpretation of the Koran appears to address a woman's needs in case of an unwanted pregnancy, it is important to note that the power to decide whether an abortion should be offered is not left to the woman. Rather, the Sheikh says Islamic doctrines dictate that in the event a woman needs to secure an abortion, the decision should be tabled and approved by a panel of professional doctors. In his words, "It should not be simply left to a woman to decide because there is a possibility that this could be abused by some people". Considering that the Kenyan doctors are more likely to be male, access to safe abortion is thereby left under male control. Moreover, this requirement may discourage many women, who may find the process of convincing doctors,

¹³⁵ I was provided with a written statement that had been used in a newspaper interview.

whether male or female, stressful. Seemingly, although abortion is not banned by Islam, access is nonetheless most likely to be rather difficult for most women.

Noticeably though, the Sheikh's view that abortion is not completely banned by the Koran is not shared by a majority of Muslims in the country. An opinion poll carried out during the period of my fieldwork in 2009 showed that among Kenya's religious groups, Muslims were the most conservative, with 74 per cent objecting to abortion under any circumstance (Kumba & Muiruri, 2009). Unlike their religious leaders, Christians expressed more liberal views, with almost half of them (46 per cent) supporting abortion but under conditions (ibid). Seemingly, the views of religious leaders, whether Muslim or Christian, are not always shared by their adherents. In addition to casting doubt on the religious leaders' mandate to speak on behalf of their followers, it also raises the question of whether there could be other underlying reasons behind Christian religious leaders' opposition to abortion. As I will show later in this chapter, it is possible that the foetal-focused discourse is less about abortion and more about promoting a patriarchal culture and controlling women's sexuality, which, as demonstrated earlier, began with the advent of Christian missionaries. As Bamforth and Richards (2008) have noted, calling abortion murder draws its appeal from long-standing patriarchal stereotypes of gender and sexuality that idealise mothers as, at once, asexual, and infinitely self-sacrificing. Because this discourse does not show any commitment to the equality and well-being of women, it is plausible to conclude that foetal right to life claims serve to reinforce patriarchal conceptions of women's appropriate roles as child-bearers.

In this section, I have examined the anti-abortion foetal life discourse, which purports to be concerned with the defence of foetal life. I have shown that because it resonates with the majority of Kenya's population who are religious, it is the most dominant and thus receives ample support from the political elite. In the next section, I provide a discussion of another discourse that advances medical science to provide an argument against legalising abortion.

6.2.2. Pseudo-Scientific Discourses of Abortion

Although not as widespread as the foetal life and religious discourses, a second category of anti-abortion discourses used by anti-abortion crusaders in Kenya

appealed to pseudo-medical and scientific tenets. These discourses emphasised that ultrasound images have *scientifically* confirmed human fetuses are human because they look like real humans and should therefore access human rights like everybody else. The discourses referred to supposed medical *facts* such as a foetus' heart begins to beat at six weeks, a foetus responds to stimuli such as pain, can suck its thumb and has different blood cells from its mother. In explaining why unborn babies ought to be protected, an anti-abortion female gynaecologist (RA1) who participated in this research explained:

A foetus is a human being with the right number of chromosomes like you and me. As a medical doctor, to say otherwise would be misleading. In fact, the foetus is not a part of the mother since he/she is genetically distinct from the mother. A woman just has that privilege of sheltering another human being. (RA1)

Further discussion with the doctor established that she screens the video *The Silent Scream* for her patients in her clinic's waiting room.¹³⁶ When I enquired why that was necessary since her opposition to abortion, as the head of an anti-abortion movement, was publicly known, she said it was to commend her patients for not having chosen abortion, and to recruit more anti-abortion crusaders. The video purports to show a twelve-week-old foetus being aborted and presents it as conscious and able to sense pain. However, this claim has been refuted by scholars who point out that:

At twelve weeks the foetus has no cerebral cortex to receive pain impulses; that no "scream" is possible without air in the lungs; that foetal movements at this stage are reflexive and without purpose; that the image of rapid frantic movement was undoubtedly caused by speeding up the film (camera tricks); that the size of the image we see on the screen, along with the model that is continually displayed in front of the screen, is nearly twice the size of a normal twelve-week foetus, and so forth (Petchesky, 1987, p. 267).

Petchesky further notes that although the video is more a cultural representation than medical evidence, the foetal images are powerful and may help to recruit

¹³⁶ *The Silent Scream* is a 1984 film video about abortion directed and narrated by Bernard Nathanson, an abortion provider turned pro-life activist, and produced in partnership with the National Right to Life Committee (Petchesky, 1987).

anti-abortion activists (ibid.). As such, the doctor's intention in screening the film is well acknowledged.

An important aspect of the images used in anti-abortion texts such as *The Silent Scream* is that they usually exclude visualisation of the woman carrying the foetus (Condit, 1990). By presenting the tiny helpless foetus as a being whose life is threatened by its own mother, people are invited to identify with the *unborn child* and not with the woman whose life may also be at risk (Sherwin, 1992; Thornton & Paltrow, 1991). The resultant construction of an adversarial relationship between the foetus and the woman enables the creation of a gap between mother and foetus, which in turn allows anti-abortionists to isolate the foetus, presenting it as distinct and unconnected to the woman. By so doing, anti-abortion actors are able to ignore the fact that the foetus inhabits a woman's body and is wholly dependent on her for its maintenance (Heumann, 2007). As Sherwin (1992, p. 106) notes, "one can only view the distinction between being in or out of a woman's womb as morally irrelevant if one discounts the perspective of the pregnant woman". Furthermore, this strategy of removing women and their rights and needs from the debate pulls the abortion discussion away from the reality of women's lives, thereby making invisible most of the pro-abortion discourses that will be discussed in the next chapter.

The emotional experience expected from the viewing of foetal images is usually intended to foster the anti-abortion construction of the foetus as autonomous (Hopkins et al., 2005). However, the impossibility of such a claim is well captured by the Illinois Supreme Court explanation in rejecting an application to expand the concept of foetal rights to permit a foetus to sue its mother for prenatal injuries resulting from the mother's actions during pregnancy:

The relationship between a pregnant woman and her foetus is unlike the relationship between any other plaintiff and defendant. No other plaintiff depends exclusively on any other defendant for everything necessary for life itself. No other defendant must go through biological changes of the most profound type possible at the risk of her own life, in order to bring forth an adversary into the world. It is after all, the whole life of the pregnant woman which impacts on the development of the foetus. As opposed to the third-party defendant, it is the mother's every waking and sleeping moment which for better or worse shapes the prenatal

environment which forms the world for the developing foetus. That this is so is not a pregnant woman's fault: it is a fact of life. (Stallman v. Youngquist, 125 Ill.2d 267, 531 N.E.2d 355, 1988)¹³⁷

As the court rightly upholds, claims of foetal personhood ignore the relational dimension of foetal development, in addition to presenting women as unconcerned about the foetuses that they carry. However, this is not the case, since most women actually express concern over their foetuses. For example, in a study carried out on abortion in Kenya's Central Province, while men's narratives suggested that abortion was women's strategy for concealing their waywardness, unfaithfulness, and promiscuity, women saw it as a way of protecting themselves against the negative socioeconomic consequences of mistimed childbearing (Izugbara et al., 2009). In deciding to abort, these women were found to take into consideration not just other children that they may already have, but also the unborn. This is clear in the following extract:

If she is married, and she sees that she has children at home and these children are suffering and she is also suffering. And this husband...maybe he is not concerned much about the situation...the woman may say if I have another child poverty will continue to increase. So it is better if I abort and so she aborts (as cited in Izugbara et al., 2009, p. 409).

Evidently then, presentations of foetuses as autonomous and pregnant women as unconcerned about their welfare are misleading.

Moreover, the construction by religious and scientific discourses of foetuses as seemingly independent and autonomous beings is not supported by indigenous languages. In a majority of Kenyan languages, the word *foetus* and related terms such as *embryo* are not commonly used, except by people who are well conversant with English. As such, most public talk about the foetus makes reference to the *baby*, since Kenyan languages do not seem to have words that specifically refer to a foetus. A linguistics University of Nairobi lecturer with whom I had an informal discussion explained that because of the fear of spirits and/or witchcraft as well as the danger associated with pregnancy, most communities avoided making direct reference to pregnancy and/or the foetus. This scholar, whose first language was

¹³⁷ Available at http://www.leagle.com/xmlResult.aspx?xmlidoc=1988392125Ill2d267_1380.xml&docbase=CSLW AR2-1986-2006

Kikuyu, noted that a direct translation of the statement, “Mary is pregnant”, would be “*Mary ena nda*”, whose direct translation is “Mary has a stomach”. While any speaker of the language would certainly understand that *stomach* in that context refers to *pregnancy*, it should not be lost that this meaning is an extension of the word’s referents since under normal circumstances, *nda*, refers to stomach. Moreover, it is also unlikely that speakers of Kikuyu language could not differentiate between pregnancy and stomach. This observation becomes even more intriguing when one considers that, in a related language, Kikamba, the direct translation of the statement “Mary had an abortion”, would be *Mary nuunaumisye ivu*, which literally means “Mary removed stomach”.

Two conclusions can be deduced from the above observations. Firstly, there is no mention of the baby or foetus. This, coupled with the use of the verb *remove*, which can be used with any noun including cup, water, and clothes, presents a meaning that is devoid of any moral judgment toward a woman who has an abortion. In other words, if having an abortion can be talked about using the same verb as removing one’s clothes, this can only point towards the acceptability of the action denoted by the verb. This observation agrees with anthropological research which has shown that although not encouraged, abortion was commonly used in traditional African societies as a remedy for unwanted pregnancies. Thomas (2003), for example, notes that among the Meru people of Kenya, when an uncircumcised girl got pregnant, she usually procured an abortion. Afterwards, she got circumcised alongside her age mates and got married. No stigma was attached to the procedure.

Secondly, the use of “stomach” to refer to pregnancy can be interpreted as pointing towards the dependent nature of a foetus. This is evidenced by the grammaticalization of body parts found in the majority of African languages (Brown & Ogilvie, 2009).¹³⁸ In these languages, body parts are often used as “structural templates to express deictic messages” (Simango, 2004, p. 97), so that a word such as *stomach* usually can indicate spatial concepts for ‘in(side)’ (Heine

¹³⁸ In a survey of 125 African languages, Heine et al. (1991) found that more than three quarters of the terms whose etymology was known were derived from human body parts.

& Kuteva, 2002). Looked at in this way, it might be possible to explain why Kenyan languages have no specific words referring to the foetus, since it can only be defined as being inside the woman. As such, it is not possible to talk of a foetus as an autonomous being, since it is not possible to talk about it independently. This is very different to the English language, which allows speakers to speak of foetuses without making reference to the pregnant woman.

It is therefore my contention that the valuing of the foetus over the pregnant woman, and its justification through science, was introduced by either Christianity or the English language. Perhaps a more significant pointer to this is the fact that infanticide was rather common in the majority of African traditional societies (Milner, 2000). For instance, although children were highly valued, the Kikuyu people of Kenya also practised ritual killing of twins (LeVine & LeVine, 1981). Moreover, because pregnancies conceived by uncircumcised girls were believed to pose grave moral dangers, the girls were usually required to procure abortions or arrange for such babies' murder after birth (Thomas, 2007). This practice has also been found among the Bemba people of Zambia, as well as the Akan people of Ghana (Bleek, 1990). Audrey Richards (1982, pp. 33-34) has noted that children born to uninitiated girls were considered "creature[s] of ill omen" who brought misfortune to their home villages by stopping rainfall, making granaries empty quickly, and compelling their parents and themselves to be driven into the bush. Although such accounts of condemnation of uncircumcised girls' pregnancies point to the importance of female circumcision in readying girls for socially acceptable conception and childbirth, they also demonstrate that the societies, by recommending infanticide or abortion, placed higher value on the future lives of women and girls. As a proverb in my mother tongue, Kikuyu, summarises, "it is better to save the pot than to break the pot while attempting to save the water it contains".

At another level, allocating the foetus the status of personhood on the one hand blurs the legal distinction between a foetus and an already born baby, while on the other hand allowing anti-abortion actors to claim to act as litigators on its behalf. This is further achieved through the earlier noted presentation of the foetus as vulnerable, fragile and unable to defend itself. In doing so, anti-abortion actors reinforce the acceptability of people, other than the mother, acting on behalf of the

interests of the foetus. Such reasoning must have informed Kenyan anti-abortion activists who disrupted a mock tribunal organised by pro-abortion actors in 2007 and demanded representation for unborn children. The demonstrators shouted, “This forum is one-sided, who is speaking for the children? We have heard the testimonies of the mothers. Who will speak for the children?” (White, 2007). Obviously, the anti-abortion activists had appointed themselves as the representatives of the unborn, but without any consideration for the pregnant woman, except in a way that is the subject of the following section.

It is worth noting that the pseudo-scientific anti-abortion discourse is not particularly popular with the Kenyan political elite, as compared to the foetal-life discourse. My take is that because Kenyan politicians make public pronouncements on abortion to attract votes and/or political support from religious leaders, opposing abortion on religious grounds presents a better choice.

6.2.3. Abortion and Women’s Health

An additional category of anti-abortion discourses in Kenya constructs abortion as problematic because of the risks it poses to women’s health. For instance, while contesting Article 26 (paragraph 4) of the 2009 proposed draft Constitution that provided for legal abortion if a pregnancy was a threat to a woman’s life or health, the Catholic Kenyan Episcopal Conference argued that:

Is a danger to the health of the mother a sufficient reason to abort a child in the womb? Is the stress which a young schoolgirl undergoes on discovering that she is pregnant a sufficient threat to her health, so that she can demand and obtain an abortion? (Kenya Episcopal Conference, 2010)

It is important to note that in this extract, the Catholic Bishops in Kenya limit pregnant women’s health problems to stress, while downplaying and/or ignoring the well known fact that pregnancy and child-birth remain among the most serious threats to women’s health. The hypocrisy of caring about *abstract* women’s emotional wellbeing while ignoring their physical circumstances is also evident in the Catholic Bishops’ claim that any danger to the health of the pregnant woman is likely to be a result of an abortion. They assert that:

There are many “trained health professionals” who vouch for the fact that the guilt or trauma known as “post-abortion syndrome” is a factor that can

damage a woman's emotional life. This is a result of aborting the child – an act that cannot be reversed. (Kenya Episcopal Conference, 2010, pp. 1-2)

Notable is the attempt to attain scientific legitimation through reference to the *objective* use of medical authorities. A similar argument was advanced by the American Association of Pro-Life Obstetricians and Gynaecologists (AAPLOG), who called on the Kenyan government to protect the life of the unborn in the country's new Constitution. Using an equally medicalised discourse, members of the association claimed that induced abortion has been associated with a significant increase in major depression, suicide, self-destructive behaviour and also increased substance abuse among those who have procured abortions (Catholic Information Service for Africa, 2010). Although these claims have been contested, they are commonly articulated by anti-abortion actors in Kenya, who, like the Catholic Bishops and AAPLOG, focus on what they allege to be its negative mental health consequences. For example, one of my research participants associated induced abortion with madness, while another made reference to some form of psychological problem resulting from pregnancy terminations:

Legalised abortion leads to an increase in its incidence. We will have more mad women walking the streets as a result of psychological problems resulting from the guilt of knowing that one killed their own baby. (RA4)

Women suffer a lot as a result of abortion. If one had the abortion say in September, they get sick every year during that month while others hear voices of crying babies. I know a woman who cries whenever she sees a child of the age her aborted one would have been. (RA1)

In relation to RA4's claim, legalised abortion has been found not to lead to an increase in its incidence (Cohen, 2009). Rather, legal abortion leads to a reduction in deaths and health complications that women experience as a result of unsafe abortions (*ibid.*). As for the claims that abortion results in mental health problems, it is possible to argue that the anti-abortion research participants have consciously chosen to focus on the *abstract* negative mental health consequences of abortion because establishing or conclusively disproving a causal relationship between abortion and subsequent behaviour is difficult (Cohen, 2006). This is unlike

abortion's physical safety, which science has generally attested to when performed under medical supervision (*ibid.*).¹³⁹

The argument by anti-abortion activists that abortion has negative effects on women's mental health is well documented (Bazelon, 2007; Cohen, 2006; Coleman, 2006; Fergusson et al., 2006; Lee, 2003; Reardon et al., 2003). These anti-abortion researchers have insisted that abortion poses significant risks to women's mental health and carries a greater risk of emotional harm owing to feelings of guilt, unresolved loss and lowered self-esteem, than childbirth does (Speckhard & Rue, 1992). Claims of the mental health risks of abortion, referred to as post-abortion syndrome (PAS), gained visibility from the mid-1980s when Dr. Vincent Rue, who has been credited with developing the argument, insisted that the psychological effects of the decision to have an abortion could generate psychological distress (Speckhard & Rue, 1992). To support their claims, abortion opponents have focused on research, such as a 2008 New Zealand study whose findings reported a 30 per cent increase in mental disorders for women having abortions (Fergusson et al., 2008). These findings have, however, been disputed because firstly, most abortions in New Zealand are anyway authorized on the basis of mental health indications,¹⁴⁰ and secondly, the results were based on after-the-fact interviews with the women, which could have skewed the results (Casey et al., 2008; Fergusson et al., 2009; Major et al., 2009).

Conversely, a more recent study in Denmark showed no credible evidence that elective abortion of an unwanted pregnancy causes mental health problems (Munk-Olsen et al., 2011). This study confirms the findings of the American Psychological Association that abortion carries no more mental health risk than

¹³⁹ Some antiabortion activists have however frequently charged that abortion threatens women's future fertility and is a particular risk factor for breast cancer. These claims have been disapproved (Cohen, 2006).

¹⁴⁰ In order to obtain a legal abortion in New Zealand, a woman must obtain the approval of two specialist consultants, and the consultants must agree that either (a) the pregnancy would seriously harm the life or the physical or mental health of the woman, (b) the pregnancy is the result of incest, (c) the woman is severely mentally handicapped, or (d) a foetal abnormality exists. An abortion will also be considered on the basis of the pregnant woman's young age or when the pregnancy is the result of rape (Major et al., 2009, p. 871).

carrying a pregnancy to term (Carey, 2008). A task force¹⁴¹ commissioned by the APA to collect, examine, and summarize the scientific research addressing the mental health factors associated with abortion, reported that:

The best scientific evidence published indicates that among adult women who have an unplanned pregnancy the relative risk of mental health problems is no greater if they have a single elective first-trimester abortion than if they deliver that pregnancy. The evidence regarding the relative mental health risks associated with multiple abortions is more equivocal. Positive associations observed between multiple abortions and poorer mental health may be linked to co-occurring risks that predispose a woman to both multiple unwanted pregnancies and mental health problems (American Psychological Association, 2008, p. 4).

The panellists were, however, careful to add that mental health among women who experience an unwanted pregnancy may be a reflection of pre-existing and co-occurring conditions in a woman's life that place her at greater risk for poor mental health in general, regardless of how she resolves her pregnancy (ibid.). Seemingly, the socio-cultural contexts in which a woman lives are likely to affect her mental health following an abortion (Major et al., 2009). A qualitative study by Goodwin and Ogden (2007) showed that:

Those [women] who described how they had never been upset or experienced a linear recovery also tended to conceptualize the foetus as less human, reported having had more social support and described either a belief that abortions are supported by society or an ability to defend against a belief that society is judgmental. In contrast, patterns of emotional change involving persistent upset or negative appraisal were entwined with a more human view of the foetus, a lack of social support and a belief that society is either overly judgmental or negates the impact that an abortion can have on a woman. (Goodwin & Ogden, 2007, p. 4)

Notably, the key factors identified by Goodwin and Ogden (2007) as being associated with stress following abortion – a more human view of the foetus¹⁴²

¹⁴¹ The task force evaluated all empirical studies published in English in peer-reviewed journals post-1989 that compared the mental health of women who had an induced abortion to the mental health of comparison groups of women or that examined factors that predict mental health among women who have had an elective abortion in the United States (American Psychological Association, 2008).

and overly judgmental society¹⁴³ – are precisely the views and attitudes adopted and promoted by anti-abortion actors in Kenya. As such, although the anti-abortion actors in Kenya have not commissioned any studies to support their claims, it can be assumed from the existing scholarship that if such studies established mental health problems associated with abortion, these would be a result at least partly, of a socio-cultural context that stigmatises both abortion and women who seek terminations. To demonstrate the unlikelihood of most Kenyan women suffering emotionally after successful illegal and generally unsafe backstreet abortions, a pro-abortion research participant said, “a woman who has the courage to risk her life by pushing a crochet needle into her vagina to rid herself of an unwanted pregnancy could be nothing but happy if she succeeds”. (NSA12)

Feminist scholars have argued that the production of the seemingly woman-protective anti-abortion discourses that purport to promote women’s health are drawn from ideas about maternity and more specifically, ideas concerning the desirability and naturalness of motherhood (Boyle, 1997; Siegel, 2008). To such scholars, the mental health claims do not appear to be fuelled by genuine care for women’s health, but by anti-abortion activists’ interpretation of abortions as representing a rejection of motherhood, which for them is normal for women. Such a view is not only paternalistic but also presents women as emotionally unstable and lacking agency (Suk, 2010). In the Kenyan case, this view is exacerbated by the fact that these claims only became prominent during debate on Kenya’s new Constitution in 2009, when a clause legalising abortion to protect women’s health and lives was included by the drafters. Faced with an unprecedented legitimisation of pro-abortion discourse in the draft Constitution, anti-abortion actors appear to have appropriated the women’s health-focused discourse in order to counteract pro-abortion activists’ focus on the health and

¹⁴² Conklin and O’Connor (1995) found that women who believed that the foetus was human and underwent an abortion reported more negative feelings.

¹⁴³ Armsworth (1991, p. 378) has noted that “abortion is an issue that cuts through multiple levels of individual, societal, cultural, and political spheres, all of which seem to have an impact on the individual response.”

economic consequences of unsafe abortion (see Chapter 7). In other words, anti-abortion actors' appeal to women's health appears to have been an attempt to broaden its support base, rather than reflecting a genuine concern for women's health. In fact, as I will demonstrate in the next section, the anti-abortion actors' real intention may have been to preserve what they assume to be the moral integrity of the African society.

As already noted, the mental health discourse is a recent development and is not very popular even with anti-abortion actors when compared to the foetal-life discourse. However, it was almost totally absent from discussions that I held with state official and even in secondary materials that I used for this study. A possible reason could be that, as with the pseudo-scientific discourses discussed in the previous section, political actors may find no need to refer to it since it does not directly appeal to the target audience, who in this case, are religious leaders and their followers. For the political elite, acting religiously is likely to earn more political support than acting smart in discussing the mental health problems that could result from abortion.

6.2.4. Abortion and the Corruption of Africa's Societal Morals

Anti-abortion actors in Kenya additionally oppose abortion legalisation with claims that it is immoral. As discussed in an earlier section of this chapter, foetal life-focused abortion discourses present abortion as morally unacceptable because it results in the death of unborn babies. However, in this section, I focus on a slightly different anti-abortion morality discourse in which abortion is presented as immoral because it is a Western project that violates African traditions and culture.

The Kenya Episcopal Conference, while opposing a conference on maternal health and reproductive health organised by the Medical Association of Kenya, accused the medical professionals of propagating a misguided practice alien to Africa's moral fabric. In their words:

The acceptance of abortion - an unspeakable crime - in the popular mind, in behaviour and even in law itself, is a telling sign of an extremely dangerous crisis of the moral sense, which is becoming more and more incapable of distinguishing good and evil, even when the fundamental

right to life is at stake. Rather than provide abortion on demand, we should ask ourselves what is the fundamental problem at hand? Why is there an increase of unwanted pregnancies in the country, increasing the rate of abortion? And a further question, when did unborn children become ‘unwanted’ when according to *our traditional values* all children were considered valued members of the community? What is the source of these *alien and non-African values* we now propagate? (Catholic Health Commission of Kenya, 2011[emphasis added])

A non-state anti-abortion participant (RA1) also noted that:

Abortion is totally immoral. It is not just about killing women or babies, but about wiping out generations. It is about eugenics with which the West is targeting less developed countries. African cultures had systems that discouraged immorality. What we need is to uphold *African morality* rather than adopt European behaviours, some which encourage immorality. An African’s conscience wants to be moral. You encourage morality not by encouraging abortions, but by banning them. Teach young people about character moulding and morality, and also abstinence. Encourage them to ‘chill’ until they are married [emphasis added].

On his part, Peter Karanja, the head of the National Council of Churches of Kenya (NCCCK),¹⁴⁴ had the following to say about abortion:

The reason for these evils is indicated in the Bible in the book of James 4: 1 – 3, which reads: What causes fights and quarrels among you? Don’t they come from your desires that battle within you? You want something but don’t get it. You kill and covet, but you cannot have what you want. You quarrel and fight. You do not have because you do not ask God. When you ask, you do not receive, because you ask with wrong motives, that you may spend what you get on your pleasures.” As shown in these verses, the root of evil, even killing (whether born or unborn people), is selfish desires and a craving for pleasure. Among other results of these actions and desires, there is an ever increasing deterioration in morals and respect for life.

In the above quotations, abortion, in addition to being construed as murder of the unborn, is also presented as unacceptable because it is against African moral traditions. Furthermore, as Reverend Karanja implies, an unwanted pregnancy is a manifestation of women’s engagement with illegitimate sex. To him therefore, as to RA1, access to abortion should be curtailed since it enables women to escape

¹⁴⁴ The Reverend’s office provided a written official statement.

the consequences of their evil desires and actions. Additionally, for anti-abortion activists in Kenya, abortion affects not just individual women's lives, but also has serious implications for the family, religion and society in general as is evidenced by RSA1 reference to abortion's negative effects on African moral structure. The same view can be deduced from the following statement by Kenyan Catholic Bishops who were opposed to a mock tribunal organised by pro-abortion actors to sensitize the public on the negative consequences of unsafe abortion:

There is no reason or motive that can ever objectively confer the right to dispose of another's life. Abortion, whether legal or not, kills babies, damages women, harms families, degrades the medical profession, weakens nations and destroys churches. (White, 2007)

The Catholic Bishops' claims present a picture of an anarchic society in which the family, the moral foundation of society, is destroyed as a result of women's uncontrolled sexual desires and abortion.

From the above noted quotations, it is evident that anti-abortion crusaders in Kenya equate abortion with social and cultural disorder. As such, it is possible to argue that embedded in their earlier discussed right-to-life arguments are implicit assumptions about women's roles and lives. The anti-abortion actors' concerns can thus be interpreted as relating not just to the immorality of abortion or to saving foetuses' lives, but, more importantly, to the maintenance of heterosexual relationships in which reproduction not only occurs within the confines of marriage, but also men dominate and control women's sexuality. In other words, as Oldfield (1996, p. 68) has noted, abortion is a critical battleground in the defence of traditional family values, upholding "a model of the family capable of resisting secular pressures and transmitting evangelical values to the next generation". I would argue that because the anti-abortion foetal-focused and morality discourses do not propose mechanisms for dealing with the multitude of factors that lead women to procure abortions, the moral question of the foetus is no more than a license to control women's reproductive freedom. As researchers such as Green et al. (1996) have argued, a variety of battles over abortion are aspects of a larger struggle to reclaim what are seen as traditional values. Abortion is central and often stands as a representative of them all, as opposition to abortion

often takes additional significance as an affirmation of distinctive gender roles, opposition to feminism, and opposition to sex outside marriage (Luker, 1984).

An interesting observation relating to the anti-abortion discourses is the appeal to both African tradition and Christian doctrinal sources of legitimation. As shown in Chapter 4, the two systems of knowledge have often been used as though they are mutually exclusive. On the one hand, Christian religions in Kenya have often accused traditional African cultures of not just being a stumbling block to evangelisation, but also of hindering women's advancement through support for repugnant practices such as female circumcision, widow inheritance and polygamy. Thus, for Christian religious adherents to make reference to African traditions as justification for their opposition to abortion is a significant turnaround from past practices of seeking modernization of social values. In the same way that anti-abortion actors' argument about women's health may be intended to increase their support base, appeals to African tradition in opposing abortion may also be an attempt to earn religious leaders support from traditionalists. Seemingly, when the need arises, Christianity can co-exist with African traditions just as Christian missionaries were willing to accommodate female circumcision for the sake of retaining their African followers (see Chapter 4). Additionally, it also should be noted that the tendency to simultaneously deploy religion and culture, both powerful instruments of perpetuating patriarchal hegemony, has been acknowledged by feminist researchers (Stopler, 2008).

The appeal to African moral traditions by anti-abortion actors is usually articulated alongside discourses that present abortion as a foreign concept being advocated by *Westerners* for the purpose of population control. This perception is often coupled with a widespread belief that the push for abortion legalisation and access to contraceptives, even for teenagers, is linked to a eugenics movement aimed at reducing the populations of what one research participant (RA1) referred to as "lower poor races". Kenyan Catholic bishops have, for example, identified abortion as part of a larger international effort to impose the anti-child mentality of Western feminism onto Kenyan society (White, 2007). To them "high levels of poverty and unemployment in an agricultural economy and a relatively high birth rate of 4.82 children born per woman makes Kenya a favoured target of international population control organizations, largely funded through the US"

(ibid.). Such concerns about eugenic motives are concretised by the fact that much international aid work in Kenya, as elsewhere in Africa, emphasizes population control, abortion, sterilization and contraception as ways of reducing poverty and enhancing development. RA1 for example claimed that the World Bank and other donor organisations always demand that 20 per cent of all borrowed money be dedicated to population control-related projects, which to her include those concerned with the provision of contraceptives and abortifacients.

Fear of African population manipulation was also evident during the Synod of the African Catholic bishops in Rome in 2009, with one bishop warning against the incursions of Western NGOs into Africa, saying that they have “hidden agendas” in pushing contraception and abortion as part of population control policies (White, 2009). Another participant at the same Synod, Cardinal Wilfred Napier, claimed that one Western notion classifies pregnancy as “a sexually transmitted disease” (ibid.). The same worry was evident in a comment by a caller to an FM radio call-in session,¹⁴⁵ who wondered:

How can one explain how clinics like Marie Stopes are flooded with contraceptives, abortifacients and condoms while there are absolutely no other drugs available to treat other diseases that actually kill more Kenyan women? How is it possible that if a woman went to Marie Stopes suffering from malaria or typhoid, they would be turned away, but would be attended to immediately if they wanted a termination of pregnancy, sterilization or contraception?

Indeed, it is important to acknowledge that the concentration of population control policies in the developing world and among minority populations in the developed countries is real and is also well documented (Kuumba, 1993). While population growth in the developed first world is encouraged, family planning approaches towards people of colour in the rest of the world are emphasised. Although pan-African and some feminist researchers have claimed population policies are a strategy in the process of dominating Africa and manipulating its population (ibid.), I contend that the need for women to control their reproductive capacities should not be ignored. Moreover, allocating women the burden of ensuring the survival of the African race but without providing them with the social and

¹⁴⁵ The radio station, Classic 105 FM, on 27th January 2009, asked listeners to call in and express their views on legalizing abortion in the country.

economic mechanisms to do so is hypocritical. Compared to men, African women remain relatively poor, even though they are expected to take primary responsibility for the care of their children.

It is notable that arguments which present reproductive health, including abortion and family planning, as Western concepts tend to receive a lot of publicity from anti-abortion crusaders, politicians and media houses in Kenya. The fact that they seem to appeal to Africans to resist cultural colonialism and foreign impositions also makes them popular with the general population. This, when coupled with claims that abortion and family planning are propagated by Western feminists who *sit on their men*, makes pro-abortion discourses become more unacceptable in a predominantly patriarchal society. For the political elite, for whom it is often necessary to appear to defend a commitment to African values or otherwise risk being seen as stooges of Western powers, the abortion is unAfrican discourse is common. Overall, this leads to debate on the issue of abortion becoming more controversial and confrontational, while rendering reproductive health policies as a whole particularly vulnerable to weak political and policy commitment. As already noted, as a result of the nature of Kenyan politics, Kenyan leaders are unlikely to support or take a personal position on controversial issues. This is exacerbated by the tendency to equate reproductive health with abortion and homosexuality, both of which are unpopular with the general public. According to a lawyer working with a women's organisation, "equating reproductive health with abortion is one reason why the proposed Reproductive Health and Rights Bill (2008) was ignored by the Kenyan Parliament. Although there were many positive aspects in it, people chose to focus on the clause allowing for the termination of pregnancies. It is like throwing away the baby with the bath water" (NSA12).

A feminist critical analysis of claims that abortion is unacceptable because it is a foreign imposition reveals two contradictory ideas. First, it is ironic that religious leaders, the main proponents of moralistic religious anti-abortion discourses, ignore the fact that their religions are also relatively speaking *foreign*. At another level, this may actually be the reason behind the need to appeal to African moral traditions as a way of bolstering the authenticity of religious claims. Secondly, arguments that oppose abortion predominantly on the basis that controlling fertility is a Western concept ignore the fact that women in traditional African

societies also controlled their fertility using herbs, among other methods. As a research participant (NSA4) explained:

The whole issue of controlling and managing fertility was very well done, whether it was spacing of children or unwanted pregnancies. Our traditional communities had ways at all times of dealing with that. What is so amazing is how now we want to be Africans, as an African nation. We want to modernize but we don't want to modernize on the issue of women's rights. We want to be modern and to drive German cars and own laptops but we don't want to give women rights in marriage or in reproductive health. I don't understand that at all, and therefore think we are a very hypocritical society because we did have those systems. They were there, they were broken down and we failed to replace them and think that it is what it should be. I think we are actually living abnormally.

As noted by this participant, claims that family planning is unAfrican are not only false but are used to construct women as custodians of African culture. In the *African nation*, everyone else is allowed to be *modern*, except for the women. However, as noted in Chapter 4, what is today presented as primordialist and ahistorical African tradition and/or culture is in fact a reflection of the interaction of the colonial administration's ideas about correct gender relations with those of a conservative African male elite, and those of Christian missions. The conceptual fusing of women with culture and tradition has two particular implications for women. Firstly, women not only become symbols in a battle to construct particular versions of *modern* versus *traditional* society, but also symbols of cultural integrity or resistance to Euro-American domination (Walley, 1997). Secondly, the association between women and tradition has meant that *our tradition* has often been used to legitimate attempts to increase and/or maintain control over women. Seemingly, where gender relations in general and women's empowerment in particular are concerned, tradition as culture is viewed as timeless and unchangeable, whereas change is acceptable, particularly when it relates to improving men's lives.

Additionally, claims that abortion is a Western practice also assumes a paternalistic ideology that presents African women as being in need of protection from Western feminists and non-governmental organisations that coerce them into having abortions. Implicitly, it is suggested that African women who have abortions do not in fact want them; rather, they are influenced by Western culture,

which also condones other *evil* practices such as homosexuality. This discourse presents African women as vulnerable, dependent, and uninformed, and therefore in need of abortion restrictions to protect them from *harmful foreign influences*, which in turn frees them to fulfil their *traditional African role* as mothers.

In this section, I have discussed anti-abortion actors' claims that abortion is unacceptable in Kenya because it is not just unAfrican, but it is also an imposed Western practice. I have, however, demonstrated that the problematic nature of the claims and shown that their real intention is to instrumentalize women as symbols of *Africanness* in opposition to Euro-American cultures, in the same way that the nationalist movement utilised the issue of female circumcision as discussed in Chapter 3. In the next section, I look at the general policy implications of the anti-abortion discourses as well as their proposed solutions to the problem of unsafe abortion in Kenya.

6.3. Implications of Anti-Abortion Discourses

As the above analysis reveals, anti-abortion discourses in Kenya can be characterised as moralistic, foetal life-focused and generally popular. An important element of the explicit claim that a human foetus is a rights-bearing unborn human child from the moment of conception is the overt implication that abortion is murder and thereby a violation of the most fundamental human right (the right to life). In the words of a Presbyterian religious leader (RA6) who participated in this research, "a society that can deny a human being the right to be born cannot possibly claim to be in a position to protect any other human right". This conferring of human rights to foetuses not only places the foetus and the pregnant woman on the same level as bearers of human rights, but also intentionally interprets the foetus as a citizen, whose life the state has a specific obligation to protect. This has two possible consequences. In addition to positing a fundamental dichotomy between the rights of the woman as a person and the rights of the foetus, claiming rights for foetuses in a country where women are themselves unable to access equal rights with men (see Chapter 5) weakens the women's case by silencing them. Secondly, by presenting both pro-abortion activists and women who have abortions as selfish or insensitive to the life or death of foetuses, foetal life-focused discourses not only demonize women but

also create a situation in which fetuses are in need of protection from their murderous mothers.

Feminist scholars, and particularly radical and socialist feminists, have claimed that the discursively constructed opposition between the rights of a pregnant woman and the foetus' right to life is not a coincidence but is often invoked by anti-abortion actors as a rationale for efforts to control women (MacKinnon, 1989). It is generally agreed that one of the major ways of reducing the number of abortions is by giving women complete control over their own reproductive lives through making available contraceptives and information on their use (Cohen, 2009). However, religious organisations in Kenya, led by the Catholic Church are opposed to contraception, advising women to refrain from sex until marriage. This is clear in the following comment by the leader of the National Council of Churches in Kenya, Reverend Peter Karanja:

The Bible teaches that sex is to happen only between a man and his wife. The concept of protected or unprotected sex is an illusion and a lie that some illicit sex is "safer" than any other. In the end, all illicit sex leads to death since it is a sin.

This statement makes it clear that the Canon is opposed to sex outside of the institution of marriage, rather than to birth control per se.

Another consequence of the privileging of foetal life is the silencing of women who have abortions. By focusing all attention on the foetus, these discourses significantly obscure the actual reasons behind women's abortions, and, consequently, offer little in the way of practical responses to these needs. Making abortion unavailable, as proposed by Kenyan anti-abortion actors does not, for instance, address the needs of women who seek abortion because they were raped, or are living in abusive relationships, or lack access to effective contraception, or will have to drop out of work or school to raise an unwanted child. Banning abortion also does not address the needs of women who cannot emotionally or financially provide for their other children, and neither does it help women control the timing of motherhood. Research in Kenya has shown that women have abortions for all these reasons, which restrictive abortion laws cannot and do not address.

At another level, voicing concern for *abstract* unborn babies provides anti-abortion crusaders, and more so religious and political leaders, with a chance to appear to be addressing issues affecting the society without actually doing anything about them. In a community where more than half of the population lives in poverty, and where women have the primary responsibility for taking care of children, the anti-abortion actors' choice of what to be concerned about can be interpreted as out of touch with the reality. This view is well captured by an anonymous caller (AA2) to a radio station who wondered:

If these holier than thou fellows are so worried about children getting killed, how is it that they do not offer to take in the unwanted babies? Besides, why haven't they bothered to first of all care for the thousands of live *chukuras* (street children) who live like abandoned animals on our streets?

As noted by this caller, anti-abortion actors in Kenya condemn abortion but fail to provide mechanisms for dealing with the consequences of unwanted pregnancies. As for the political elite, opposing abortion makes them *worthy leaders* in clerics' eyes, thereby assuring them of support during elections.

In addition to silencing Kenyan women who have abortions, the religious and moral anti-abortion discourses also portray women who fail to embrace motherhood in the face of unwanted pregnancies as the embodiments of a *social problem* themselves. When a journalist presented the spokesperson for the National Council of Churches of Kenya (NCCCK) with data on deaths and health complications resulting from unsafe abortion, he was quick to say:

Our position is that the abortions shouldn't be happening in the first place. Pregnancies should not be terminated. What is required is education for the women so that they don't get pregnant if they are not interested in getting the baby. (Alsop, 2010)

Another cleric, a Presbyterian Church religious leader (RA6) also claimed that, "No one should get pregnant and then decide on abortion by claiming that they do not have resources to bring up the child". These Kenyan religious leaders not only castigate women for getting pregnant when they shouldn't have, but also seem to imply that all that women need to do to avoid abortion is to avoid getting pregnant in the first place. That being the case, it is unclear why clerics in Kenya oppose

termination of pregnancies resulting from rape, since such women would have had no means of avoiding getting pregnant. A religious leader, RA5, expressed no sympathy for pregnant victims of rape as he wondered, “why should the baby be killed and he/she is not the criminal? Besides, there is no law which stipulates that one should be killed if their father is a criminal”. By making such arguments, religious leaders fail to perceive the contradiction between their belief that women just need not to engage in sex in order to avoid abortion, and their failure to support abortion for women on whom pregnancy is forced through rape. Although the religious leaders do not overtly blame such women for getting pregnant, the clerics not only fail to exhibit any sympathy through their demonization of the choice to have an abortion under any circumstances, but also fail to recognise the crime against the raped woman and the immorality of forcing her to suffer its consequences.

A possible consequence of the above religious leaders’ claims which ignore the circumstances in which pregnancies and abortions happen is that it makes it difficult and controversial to legislate against elements of domination such as rape and sexual coercion (see Chapter 5). Implicit assumptions behind discourses that present women as responsible for unwanted pregnancies include, on the one hand, that sexual intercourse leading to conception is usually voluntary, and on the other, that women have control over that sex. This is evident in the following anti-abortion male research participant’s observation:

Why do women in this country or elsewhere for that matter want to go ahead and get pregnant and then procure abortions? Why are we not realizing that the way you can avoid going through the whole problem of abortion is just by not getting pregnant? (RA7)

Feminist research has, however, shown that heterosexual intercourse is not always coequally determined, but is instead often defined in terms set by men (MacKinnon, 1987). As such, it is difficult to assume that women just need to avoid sexual activity to avoid pregnancy in an environment where sex can be used as an expression of male dominance. In fact, the choice to avoid sex is not available to Kenyan women as a result of the sexist nature of a patriarchal society which constantly struggles to enforce men’s control over women’s sexuality and reproduction, as claimed by radical feminists. Kenyan men’s dominant role in

controlling sexuality is evidenced by widespread sexual violence, with at least 21 per cent of Kenyan women being victims (Kenya National Bureau of Statistics & ICF Macro, 2010). Moreover, as further noted by a children's welfare activist:

The era of HIV/AIDS has increased sexual violence against girls and younger women. There is a general feeling among men that young girls, especially those living in the rural areas, are safer sex partners because they are considered free of the disease. Additionally, there is also this strange belief that if a HIV/AIDS positive man has sex with a virgin, they could be cured. Although it is just superstition, it has increased young girls' vulnerability to sexual perverts. (NSA2)

This participant's claims are supported by reports which have consistently shown that rape, especially of schoolgirls, is rampant (Wane, 2009). As such, anti-abortion moralizing religious and foetal life claims that present women as being responsible for unwanted pregnancies, as well as the sexual intercourse leading to the pregnancy, are misleading, since clearly, there are circumstances where pregnancy is not a choice but rather is forced.

Unfortunately, even in the midst of widespread sexual violence in Kenya, women and girls cannot rely on contraceptives to prevent conception. The 2008–09 Kenya Demographic and Health Survey revealed that 26 per cent of married women in Kenya have an unmet need for family planning, 13 per cent for spacing and 13 per cent for limiting. Moreover, contraceptives are often unavailable in government hospitals, government health centres, and clinics, which provide contraceptives to 57 per cent of users (Kenya National Bureau of Statistics & ICF Macro, 2010). Although they are available in private hospitals and pharmacies, the price is usually prohibitive. For instance, when they are available, female condoms retail at a cost of up to US\$2, more than ten times the cost of a male condom. Not surprisingly, 45 per cent of pregnancies in Kenya are unintended (Anyangu, 2009), driving up the rate of illegal terminations.

The failure of foetal life focused anti-abortion discourses to acknowledge pregnant women's lived realities also ignores the biological reality that women do not make themselves pregnant. As noted by a pro-abortion research participant (NSA4), since fetuses do not rain from heaven like manna, women's lived experiences as well as their circumstances at the time of conception cannot be

wished away. After all, as MacKinnon (1984) has also noted, a woman does not just happen upon a foetus. By failing to take into account men's contribution to unwanted pregnancies, foetal life-focused discourses present a partial view by ignoring the role played by men in women's decisions to have unsafe abortions. Research on abortion in Africa has shown that although men are generally opposed to abortion, they play very significant roles in women's decisions to seek or not seek abortion. For example, qualitative explorations of men's attitudes towards abortion in Burkina Faso, Uganda, Kenya, and Zimbabwe have found that because of men's opposition to abortion, women normally procure abortions secretly and in most instances, unsafely, since they often lack funds to pay for safer services (Chikovore et al., 2002; Izugbara et al., 2009; Moore et al., 2011; Rossier, 2007). If the men would be supportive, perhaps deaths and complications resulting from unsafe operations would be minimised.

An additional consequence of Kenya's anti-abortion discourses, especially the one that portrays abortion as unAfrican, is the silencing of African women's sexuality in general, and Kenyan women's in particular. Abortion relates in major ways to issues of sexual independence by allowing women to control the unwanted consequences of heterosexual sex, especially in circumstances where contraceptives are unavailable. This was evident from readers' comments in an online poll that asked readers to state if they were supportive of or opposed to abortion liberalisation in Kenya, and why. One male reader was convinced that "legalising abortion will erode morals by making women and girls able to engage in irresponsible sexual behaviours since they can access abortion" (AA3). Evidently, only women's freedom to engage in casual sex seems to be questioned, while that of the men with whom they have sex is not even alluded to. Seemingly, the act of women engaging in non-reproductive sex seems to be interpreted as presenting a great challenge to gendered heterosexual relations. In fact, in Kenya, Uganda and Zimbabwe, men have been found to be opposed to contraceptives and abortion because these would make it difficult to know if their wives have sex with other men (Chikovore et al., 2002; Moore et al., 2011). Because the men themselves reported having sex with other women, their opposition can be construed as grounded in the fear of women being able to enjoy sex in the same way they do – without the fear of an unwanted birth. Clearly, the battle against abortion is not merely about the sanctity of life or the unAfricanness of the

practice, but also about controlling sexual access to women their bodies and sexuality.¹⁴⁶ As radical feminists have claimed, women's liberation can only be achieved through a revolution in which women seize control over their reproductive capacities (Firestone, 1970).

Moreover, because women's sexuality is often publicly reduced to their conventional mothering role and conflated with their reproductive capacities (Tamale 2001), Kenyan women's right to choice and sexual freedom is often ignored or swept aside by political elites seeking patronage from religious and traditional leaders (See Chapter 5). As a result of the condemnation, women who have abortions are stigmatised, since abortion is seen as presenting a challenge to the deep-seated masculine power that governs African sexual relations by disrupting the core of the heterosexist social order. For, as in Butler's (1990) observation, patriarchal societies are heteronormative and usually require men and women to perform their gender by actively participating in heterosexual activity.

Lastly, the anxieties generated by women's sexual control have been noted to overlap with parallel consternation over the changing roles and duties of women in society. As a result of economic structural adjustment programmes and globalisation, among other factors, large parts of Africa have experienced great socio-economic polarization (Lugalla, 1995). The resultant unemployment and low wages has made it difficult for men to fulfil their *assumed* traditional male roles as heads of the households and breadwinner, while, as stipulated by liberal feminists, increased participation of women in the labour market has led to a conspicuous emergence of independent women.¹⁴⁷ Weeks (1985) has noted that as a result of women's increased independence, social discontent tends to be

¹⁴⁶ Ethnographic research has shown that a key element of successful African manhood is heterosexual success, and this is proven by being able to win desirable women, preventing them from being seduced by others, and showing evidence of being a man in control (Wood & Jewkes, 2001). In fact, as was demonstrated during Jacob Nzuma's rape trial in South Africa, essentialist conceptions of *African culture* tend to be patriarchal and masculinist (Robins, 2008).

¹⁴⁷ Kenyan women have joined the labour force in large and increasing numbers over the last two decades due to increased access to education. At the same time, as a result of various factors among the structural adjustment programmes, there has been declining job opportunities for men (Suda, 2002).

articulated via preoccupations with matters of gender, which is often accompanied by increased surveillance of women's sexuality. As such, men's attempts to increase control over women can be purported to be a result of hard economic times, as also been noted by Silberschmidt (2001). She argues that African men's social value, identity and self-esteem, have been eroded by economic changes that have left those with a patriarchal ideology bereft of its legitimising activities, which has in turn led to not only increased instances of sexually aggressive behaviour, but also increased attempts to control women and their sexuality to strengthen male identity and sense of masculinity. A research participant, for example, explained that men who participated in rape during Kenya's post-election violence in 2008 said it was the only way they could assert their masculinity (NSA11). In such circumstances, abortion is likely to receive opposition from men as a group, and from political leaders who require their support to access or remain in power.

6.4. Conclusion

In this chapter, I have demonstrated that anti-abortion actors deploy four major discourses: that abortion constitutes murder of unborn children; that it negatively affects women's health; that it is both immoral; and it is unAfrican. However, as an analysis of these discourses has shown, embedded in the explicit anti-abortion discourses are implicit assumptions focused on African women's roles and lives, as well as sexual lives. The anti-abortion actors' concerns do not just relate to foetal life and the unAfricanness of abortion, but more importantly to the maintenance of heterosexual relationships in which men dominate and control women's sexuality. Moreover, by preaching and campaigning against abortion legalization, anti-abortion actors, and more so religious leaders, attempt to remain relevant in an environment of liberalism.

I have also demonstrated that, as purported by the Critical African Feminist Perspective (see Chapter 2), the neo-patrimonial nature of the state plays a crucial role in enabling the legitimisation and institutionalisation of anti-abortion discourses. To access and to remain in power, the state and ruling elite cultivate patron-client relationships in which the patrons (rulers) provide economic resources, jobs, development assistance, and other favours in exchange for

political support from key regional and local leaders (clients), among them religious leaders. The resultant mutual networks of reciprocity ensure that political leaders and policy-makers in Kenya take into account the interests of clergy when formulating public policy which of course hinders women's ability to access legal abortions, and also legitimise patriarchy.

The degree of anti-abortion actors' influence on abortion policies in Kenya demonstrates that the state is not a homogeneous entity capable of functioning independently as presented by traditional feminist theorisations of the state. Rather, the state, as claimed by the Critical African Feminist Perspective, is a convergence of institutions, all of which continually struggle to influence public policies. Notably though, while some actors are successful in institutionalising their favoured opinions, some may not be, as demonstrated in the following chapter where I discuss pro-abortion discourses, which remain largely ignored and unacknowledged by the state.

Chapter Seven

The Pot Bearer Understands its Weight: An Analysis of Pro-abortion Discourses in Kenya

7.0. Introduction

This chapter provides a detailed analysis of pro-abortion discourses in Kenya. It focuses on the arguments, philosophical principles, narratives and other important rhetorical strategies that are employed by pro-abortion actors in an attempt to counter the institutionalised, foetal focused and moralising anti-abortion discourses discussed in the previous chapter. In their struggle to achieve liberalisation of the abortion law, pro-abortion actors in Kenya have sought to construct discourses that resonate with the dominant discourses they oppose, in the hope of winning popular support and patriarchal state elite allies. As demonstrated by the Critical African Feminist Perspective discussed in Chapter 2, the neo-patrimonial nature of states in Africa significantly shapes public policy making processes since patrimonial and clientele relationships often push political leaders into serving the interests of their political supporters, including, in most instances, tribal patriarchs and religious leaders, who are unlikely to support women's right to safe abortion. That being the case, pro-abortion discourses in Kenya largely concentrate on the effects that unsafe abortion has on women's health rather than women's right to safe abortions. The discourses therefore present aborting women, much like fetuses are presented in anti-abortion discourses, as *victims* of social, cultural and political circumstances over which they have no control and for which they are not responsible. This is achieved by constructing the subjectivities of women who have abortions as young and/or poor. In this interpretive frame, because the ultimate cause of abortion is presented as being external to the woman herself, the remedy for unsafe abortion is sought in reforms aimed at removing the cultural, political, social and economic factors that expose women to unwanted pregnancies, in addition to state decriminalization of abortion. This mirrors socialist feminists' view that demands for reproductive freedom cannot be separated from the need for social and economic change, since the impediments to reproductive freedom are to be found

in structures of social and sexual relations (Petchesky, 1981). Thus, unlike liberal feminist abortion discourses that focus on women's rights to bodily integrity, pro-abortion discourses in Kenya emphasise the strong link that exists between access to safe abortion and the more politically acceptable realm of women's health and its connection to developmental goals.

Drawing on supporting evidence from various local studies on abortion, pro-abortion actors argue that Kenyan women's abortion narratives illustrate the essential role access to safe abortion plays in shielding them from the negative socioeconomic consequences of mistimed childbearing and unplanned entry into motherhood, including poverty, loss of employment, divorce, abuse, loss of marital viability, social exclusion, and poor educational outcomes. For the pro-abortion activists in Kenya, as long as women bear the primary responsibility for social and biological reproduction, claims of foetal rights to life make women shoulder the burden of taking care of children without being assured of the necessary resources to do so. One research participant (NSA3), summarised this with a common Kenyan saying which implies that, since women are bearers of the pot [pregnancy], they are the only ones who understand how much it weighs [effects of unwanted pregnancies on their lives].

In analysing pro-abortion discourses, this chapter draws on interviews with individuals, including public, private and non-governmental service providers and officials, and other representatives of the institutions and organisations concerned with reproductive health and abortion in Kenya. The chapter also relies significantly on published and unpublished material provided by the organisations I visited during my fieldwork, as well as pamphlets, press releases and newspaper articles. Notably and not surprisingly, a majority of participants from non-state organisations were unwilling to talk openly about their own positions on abortion, but felt safe enough to share their organisation's publications.

The chapter begins with a characterisation of pro-abortion actors in Kenya. This is important because the nature of the actors and their organisations has implications on the way their discourses are structured, as well as the choice of arguments. This section is followed by a discussion on pro-abortion discourses after which I discuss the implications of the pro-abortion discourses.

7.1. Non-state Actors in Kenya: Local and International Organisations

Kenya has a large elite society and has hosted many women-related conferences, including the United Nations 3rd World Conference on Women's in 1985. Yet there seems to be an absence of clearly defined pressure groups advocating policy reform on abortion despite there being a visible women's movement.¹⁴⁸ In part, this is because of the patriarchal and neo-patrimonial nature of Kenyan politics. During President Moi's dictatorial regime, a majority of non-state organisations lacked space in which to express themselves and influence public life, while others were actually coerced into being co-opted by the state, such as *Maendeleo ya Wanawake* Organisation (See Chapter 5).¹⁴⁹ Such organisations became tools to entrench the politicians in power rather than representing women's interests (Muigai, 1999).

The lack of a vibrant women's movement may also be because a majority of Kenyan women's organisations tend to be welfarist informal groups, conceived as collective self-help organisations to provide economic and social assistance to women during crisis (Geisler, 2007; Muigai, 1999). This welfare approach is reflected in numerous small scale women's savings and credit groups and investment clubs – or, as they are commonly called, *merry-go-rounds* – in which members' contributions are pooled to provide credit to their own members or make investments (Geisler, 2007). The potential for using these groups as catalysts for women's rights activism is limited by the fact that the groups are not just mostly rural based but the organisations are likely to prioritize poverty alleviation rather than mobilising for political issues such as abortion legalization. As a research participant explained, women struggling to feed their families are likely to find the abortion campaign a joke (RA1).

Although the Kenyan government's history of intimidation and harassment to stifle dissidence may have contributed to lack of a vibrant women's movement in

¹⁴⁸ In 2005, for example, there were about 1,333,135 women's groups with a total membership of over 5 million in Kenya (Geisler, 2007).

¹⁴⁹ *Maendeleo ya Wanawake* means 'Development of Women' in the Swahili language. The organisation was founded in 1952 as a non-governmental organisation during the colonial era. Its main objective was to improve African women's welfare with an initial focus on strengthening women's capacity to generate income and manage their households (Staudt, 1984).

Kenya, my research participants expressed a general feeling that leaders committed to women's rights had joined the government soon after the 2002 general elections that heralded the end of President Moi's authoritarian rule. While describing the problems facing women and other non-state organisations in Kenya, a senior officer at a government commission said:

Since 2002 when the new NARC government came into power, I think the civil society sort of lost out on its role to check on government in terms of women's empowerment. I mean they went quiet and they were in comfort with the government. But now I think it is getting clear that they need to find their voice because right now they are weak. Civil societies are very weak which includes women's movements. So we hardly hear their voices any more. They just need to re-discover themselves and start again. (NSA7)

This participant's sentiments are supported by events that occurred in the 1990s. At that time, the civil society, including religious organisations and women's organisations, with the help of international organisations, led the democratization struggle against the dictatorial regime of former President Daniel Arap Moi. During the struggle, although women's organisation played an active role in both promoting and articulating the ideals of gender equality and women's human rights (Tripp 2001), the main struggle was democratization and securing multi-party elections. As such, gender issues, among them abortion, may have been considered 'too trivial and controversial' and therefore an unnecessary burden to the furtherance of the transition to democracy. Unfortunately, even in the post-Moi era, women's issues remained unaddressed because, according to one human rights activist, NSA4, key positions in the government formed after Moi's departure were filled by leading civil society activists and women's organisations leaders.

The leadership vacuum created when the former activists joined the government as Members of Parliament, ambassadors and senior civil servants is said to have contributed to the consequent near collapse of the civil society in Kenya since those appointed could not continue criticising state actions and/or inaction (Maina, 2009). Moreover, government appointment of women and civil society leaders failed to translate into policies that could address the needs of women because, although a new democratic government had been installed, patriarchal

and bureaucratic structures of power discussed in Chapter 5 remained intact. As such, women and civil society leaders may have found it difficult to make any positive impact. Additionally, the co-optation of former outspoken civil activists into the government also meant that, for the new leaders who took over the organisations, interacting with the state was like interacting with old friends. Consequently, “a previously robust women’s movement led by academics, civil society activists and others, all of whom had been extremely vocal about women’s rights, went silent” (NSA13). The inability of the co-opted women and civil society leaders to institute positive changes into the government confirms the inadequacy of liberal feminists’ exclusive focus on integrating women into state institutions without challenging its overall structure.

As a result, unlike Western democratic states, where the push for abortion law reform has been supported by broad-based women’s movements, the abortion debate in Kenya has been spearheaded by medical health professionals and specifically by the Kenya Medical Association. For example, since the 1993 Annual Scientific Conference of the Kenya Obstetric and Gynaecological Society (KOGS) at which members passed a resolution asking the Minister of Health to present a cabinet paper on abortion as a health issue, highlighting the social, economic and health costs to the country, this organisation has consistently demanded that the government make safe abortion available (Oguttu & Odongo, 2001).

Another visible organisation has been the Federation of Women Lawyers (FIDA), with whom the Kenya Medical Association has been working closely. In July 2004, the two organisations spearheaded the formation of the Reproductive Health and Rights Alliance (RHRA), a coalition of individuals and organisations advocating for the creation of a legal, political and social environment that supports sexual and reproductive health and rights, including safe abortion in Kenya (Kenya Human Rights Commission, 2010). Other member organizations include the Centre for the Study of Adolescents, the Coalition on Violence Against Women, Family Health Options Kenya, the Kenya Human Rights Commission, the Kenya Obstetrics and Gynaecological Society, the Reproductive Health Rights Organisation (IPAS), the National Nurses Association of Kenya, individual activists, and representatives from law firms, among others. Although a

senior official of the RHRA said members of the coalition meet on a regular basis to share information and experiences, this was not obvious during my visits to the member organisations as very few research participants talked about the Alliance. A significant number, however, talked about a mock tribunal held in June 2007 which was intended to provide a platform from which the consequences of unsafe abortion could be discussed. In addition to commissioning various studies on abortion in the country, the RHRA also played an active role in ensuring that the new Constitution promulgated in 2010 guaranteed legal abortion in specific cases.¹⁵⁰

Seemingly, the alliance is the only umbrella organisation advocating for the legalisation of abortion in Kenya. It is, however, noteworthy that the functioning, with respect to fundraising, financial and programmatic administration and reporting, of the Alliance is coordinated by the Planned Parenthood Federation of America. This has often been used to justify claims that attempts to legalise abortion in Kenya are foreign. On their website, the Planned Parenthood Federation of America (PPFA) in Kenya identifies their work as focusing on reducing maternal death and disability by increasing the availability of affordable safe abortion services and supporting advocates to decriminalize abortion in the country.¹⁵¹

A significant factor that emerged in the course of this research is that, because key players in the abortion debate are medical health professionals, pro-abortion discourses in Kenya emphasise the expansion of access through a medical focus on the dangers of clandestine abortion, rather than direct advocacy for policy change. Although, as I will demonstrate later, identifying abortion as a medical issue removes the procedure from its political, social and gendered context and effectively places control over the termination of a pregnancy within the medical domain, the involvement of doctors can be seen as not just imbuing the pro-abortion debate with the power of scientific medical authority, but also as providing a discourse devoid of feminist rhetoric. In a society where politics

¹⁵⁰ For example, the organization held press conferences and provided press releases to counter anti-abortion activists' arguments against legalized abortion.

¹⁵¹ The website is available at <http://www.plannedparenthood.org/about-us/international-program/kenya-country-program-19010.htm>

increasingly relies on stringently controlled and patriarchal gender relations (see Chapter 5), doctors' statements are likely to receive greater acceptance by political and ethnic leaders for being expert advice on a health and medical problem for which they are trained. This kind of reasoning was apparent during debate on Kenya's new Constitution in 2010. Anti-abortion activists campaigned against the adoption of the draft Constitution with the argument that allowing health professionals to decide when a termination of pregnancy was necessary was in fact an attempt to provide abortion on demand. In response, pro-abortion actors insisted that the issue should be left at the hands of medical health professionals because, as noted by a research participant (NSA5), "when you visit a doctor suffering from a disease, you do not instruct him/her on how to treat you." The Minister for Medical Services, Professor Anyang Nyong'o, who was opposed to the inclusion of an anti-abortion clause in the draft Constitution, for example argued that:

People abort for very specific reasons. If a lady conceives as a result of rape, you put that lady under torture if she wants to abort and you refuse. They can even become a mental case! So abortion is something that should be dealt with by doctors, psychologists and family counsellors. (Karong'o & Kaberia, 2010)

Although the Cabinet Minister had publicly expressed support for abortion, his articulation of the medical health discourse seems to have been appropriate at a time when votes were necessary to pass the new Constitution. In addition to alluding to medical doctors' expert knowledge which allows them to speak authoritatively on health policy, the health discourse is politically safe for Kenyan political leaders, who, as a result of the neo-patrimonial nature of politics, seek to avoid dealing with controversial issues.

Another significant characteristic of Kenyan pro-abortion actors is their reliance on foreign organisations and funding. The presence of external actors advocating for and supporting the implementation of population policies has had the effect of presenting reproductive health in general and abortion in particular as foreign concepts. Additionally, dependence on foreign aid has also had effects, not just on organizational structures, but also in terms of compromising policy development and decision-making. For instance, a significant number of my research

participants noted that in the past, foreign donors covered the costs of all government and non-government contraceptives and reproductive health campaigns. However, this changed in the second half of the 1990s, when external funding declined in the context of a shift in priorities to HIV/AIDS and donor fatigue (Cleland et al., 2006; Crichton, 2008). It is therefore not surprising that insufficient state funding for contraceptives was repeatedly cited by research participants as being responsible for the chronic lack of contraceptives in the country, and the resultant unwanted pregnancies and abortions.

Overreliance on foreign donor funding for financial and logistical support was also said to affect the identification of priority areas as well as the manner in which programmes are implemented. The head of an organisation working with youth sexuality, for example, said that, following the Global Gag Rule,¹⁵² they had been unable to access funds that could help to effectively address Kenyan youths' sexuality needs. Because the Global Gag Rule limited non-USA based organizations receiving USAID funding from speaking about unsafe abortion in the context of liberalization, her organisation had had to ignore abortion as a factor in youth's welfare, even though unsafe abortions are responsible for health complications and deaths amongst young Kenyan women. As such, although the organisation was a member of the Reproductive Health and Rights Alliance (RHRA), it was not leading any efforts directly for fear of losing funding.

Another problem associated with foreign funding for pro-abortion actors in Kenya related to competition for funds by organisations. A pro-abortion activist, NSA4, explained that following the formation of a new reformist state after Moi's dictatorial and neo-patrimonial regime in 2002, international donors who had previously worked with non-state organisations chose to align with the government's development priorities and began working more through state

¹⁵² On March 2001, President George W. Bush issued a memorandum to the administrator of USAID, reinstating a policy that required foreign nongovernmental organisations to agree as a condition of their receipt of federal funds for family planning activities that such organisations would neither perform nor actively promote abortion as a method of family planning in other nations. Under the Mexico City Policy (or Global Gag Rule), in order to receive USAID funding for family planning, foreign NGOs were prohibited from using their own funds to provide abortion services, provide counselling or referrals regarding abortion, or to lobby their own governments for abortion law reform (Restoration of the Mexico City Policy, 66 Fed. Reg. At 17, 303).

programmes and agencies. An obvious consequence was not just a decline in the importance of civil society organisations but also a significant reduction in funding for their operations. Reduced funding negatively affected their ability to function and also led to serious competition among organisations, including those campaigning for abortion legalization, for foreign funding. As a result, non-state organisations in Kenya were said to concentrate only on issues that are likely to attract funding. This limitation on organisations' freedom is well described by an African scholar, Shivji (2004):

We are funded by, and rely almost exclusively on foreign funding. This is the greatest single limitation. "Whoever pays the piper calls the tune" still holds true, however much we may want to think otherwise. In many direct and subtle ways, those who fund us determine or place limits on our agendas or reorient them. Very few of us can really resist the pressures that external funding places on us. (p. 689-90)

The prevalence of project-based funding may provide an explanation as to why the abortion rights agenda has not been prioritized by major women's organizations. For example, as noted earlier, *Maendeleo ya Wanawake* Organisation has largely ignored the issue of unsafe abortion. Unsurprisingly, maternal health is not identified as one its major programmes and neither is it included in the organisation's five year strategic plan (<http://mywokenya.org/mission.html>). A look at the organisation's working partners also shows that their choice of programmes may be dictated by their donors. In the list of partners are Kenyan government departments as well as foreign governments' international aid bodies, such as DFID (UK Department for International Development), GTZ (German Agency for Development Co-operation), CIDA (Canadian International Development Agency), among others. The fact that well known international funders of abortion-related programmes such as Planned Parenthood and Ford Foundation are missing from the list may explain why abortion is not a priority for the *Maendeleo ya Wanawake* Organisation.

Evidently, pro-abortion actors in Kenya work from an already disadvantaged position since they not only lack state and elite support but also have to struggle against a firmly institutionalised anti-abortion discourse. To this end, the pro-abortion activists have developed their own discourses with which they attempt to

convince both the public and policy makers that decriminalising abortion would have positive consequences for society as a whole. However, before analysing pro-abortion discourses, it is necessary to unveil the image of women which pro-abortion actors construct in an attempt to present abortion favourably.

7.2. Subjectivities: It is Poor and/or Young Women Who Have Abortions

As demonstrated earlier, institutionalised foetal right-to-life anti-abortion discourses present abortion as immoral and unAfrican. The women who have abortions are themselves constructed as promiscuous, prostitutes, sinful, selfish, irresponsible, heartless and murderous. To counter this hegemonic construct, pro-abortion discourses in Kenya strategically seek to displace the image created by these discourses by presenting women who have abortions as needy and therefore deserving of sympathy and understanding. To this end, pro-abortion discourses strategically select and carefully weave an image of the victims of unsafe abortions as poor and/or younger women; that is, as women who may generally be considered vulnerable and less powerful. This is evident in the comment of a research participant who said:

Unsafe abortion affects only poor women and young school girls since richer women can access safe ones. If you or I needed an abortion, we can walk into any hospital and pay for a safe procedure. Unsafe abortions involve women living in poverty, young women, and women in difficult living situations. Unsafe abortion is certainly a class issue. (NSA3)

By pointing out that unsafe abortion mainly affects poor women, whether young or old, the pro-abortion discourse exemplified by the above participant aims at attracting public sympathy for the women victims, in the same way that anti-abortion discourses seek sympathy for aborted fetuses. The focus on class mirrors socialist feminist view of women as differentiated by class, among other categories (Watson, 1990). Thus, unlike most Western countries where abortion is defined as a civil liberties' issue, Kenya's pro-abortion discourse construct an extremely needy subject who is intended to galvanise support in an overtly hostile patriarchal and religious society. In these discourses, women are portrayed as not wanting to have abortions, but as being forced to have them by external factors that are beyond their control. Thus, instead of being seen as immoral and/or unAfrican, the women are presented as good women who, in different

circumstances, would want to continue their pregnancies. This is evident in the following comments by pro-abortion research participants:

What I know is that for every marriage in Africa, people get married to get kids. And I know married people get very happy when they have kids. So if at some point the woman says she wants an abortion, you should know that it is something big. It is either due to contraceptive failure or lack of it. But it is not intentional. Maybe she has eight children and they cannot afford another one. (NSA2)

The religious people don't interrogate to understand the different reasons why women have abortions. If they did, they may find that women have abortions as a result of ignorance, non-availability of cheap accessible contraceptives and also because of contraceptive failure. The impression you get from them is that people who have abortion are immoral, or they are just girls looking for a good time and want to use abortion as contraception to cover it up. But, statistics show that most of the women who go for abortion are not just young girls but many are married women. They feel unwanted pregnancies can disrupt everything: child spacing, finances or stability of their marriages. (NSA4)

As is clear from the above observations, presenting poor married and younger women as the primary victims of unsafe abortion plays a strategic role in enabling pro-abortion actors to construct a category of needy women, as well as providing an opportunity to introduce into the debate multiple factors, such as poverty and contraception unavailability, which clearly influence abortion decisions.

An important characteristic of pro-abortion discourses that categorise victims of unsafe abortion as vulnerable is the ability of these discourses to resonate with the institutionalised anti-abortion discourses. As already established, hegemonic discourses on abortion in Kenya are foetal life-focused and moralistic. As such, presenting poor and younger women as victims of unsafe abortion provides a window through which pro-abortion discourses appeal to some aspects of the moral and religious anti-abortion discourses. Unlike anti-abortion discourses that present women who undergo abortions as immoral and selfish, pro-abortion discourses seem to claim that abortion is undertaken by poor women out of consideration and responsibility for both their unborn and existing children. By procuring abortions, women are neither defying motherhood nor being selfish, but are in fact seeking to be good mothers by avoiding having children who may end

up being *chokoras* (street children). This argument emphasises the fact that the choice to abort is not influenced by selfish or immoral interests, but is rather made for moral reasons that take into consideration the welfare of the unborn child. Implicitly therefore, the pro-abortion discourse constructs abortion as a *necessary evil* that society must live with if it is not willing to make motherhood comfortable for women.

It is important to mention that the choice to highlight pregnant poor and young women may be strategically informed by the knowledge that, in the past, the Kenyan elite, particularly the male-dominated Kenyan Parliament, have tended to be sympathetic to young pregnant women's situation. Unlike adult and older women who are thought to be capable of making independent decisions regarding their sexuality, young schoolgirls tend to attract sympathy from the general public and policy makers. For instance, a former Attorney General, Charles Njonjo, while contributing to a motion on legislation to curb teenage pregnancy, argued that:

There is a very serious problem in this country about young girls, some of them in schools, becoming pregnant. I suggest that the problem, in fact, must be shared equally by the man and the girl who is seduced. I have suggested in this house before what we ought to do – and it is something this House must think of seriously – is to see whether it is time that we re-introduced the Affiliations Act, so that men who put girls in trouble accept responsibility and if they do not do that voluntarily they are made to accept the responsibility by the courts.

Mr. Speaker, most of the Hon. Members here are parents and perhaps some of them are guilty of what we are talking about in this House. But we must all accept this responsibility, that we are ruining the future of young children. When you are seducing a young girl of 14 years, think of your own child of 14 years. If you do that, perhaps this will be a deterrent to this very serious problem that we are having at the moment. (Republic of Kenya, 1979, p. 1164)

When a female Member of Parliament suggested that the government should bring about legislation that would require men to meet half of the cost of caring for children born outside wedlock instead of pleading with adult men to respect school-girls, the Attorney General exhibited no sympathy for older women in his response:

My concern is with young girls who are still at school. You remember the one problem that we had with the Affiliations Act was brought about by women – grown up women – some of whom were 40, 50 or even 60 years of age.... I would like to suggest that a woman of 40, 50, or 60 years needs no protection from anybody because she is capable of protecting herself mentally and physically by saying “No”. However, a child of 14 years who is still at school should be the concern of everybody here (Republic of Kenya, 1979, p. 1165).

Evidently, a young pregnant school-girl attracts sympathy because of her perceived innocence and age, unlike the older women who are considered as autonomous adults. However, I suggest that the choice to focus on younger women and more so school-girls has two other advantages. Firstly, as is evident from the Attorney General’s comment, empathy for school-girl pregnancies seems to stem from the position of the father: “When you are seducing a young girl of 14 years, think of your own child of 14 years.” Because pregnant school-girls often get expelled from school, this is not only seen as a waste of the concerned parent’s investment in the girl’s education, but also as a threat to her future prospects – ruining the future of young children. As such, Kenyan leaders’ interests in school-girl pregnancies can be said to stem from the need to protect their own interest as parents.

Secondly, pro-abortion actors’ choice of school-girls also fits well with wider developmental and elite interests. For instance, teenage pregnancy has often been cited as a constraint in the elimination of gender disparities in education, and in the achievement of the Millennium Development Goals of universal primary education and gender equality in education by 2015 (Kenya Human Rights Commission, 2010). Besides, the social benefits of educating women, such as improved agricultural productivity, improved maternal and child health and reduced fertility, are also likely to attract government and elite support for two main reasons. First, their achievement can lead to electoral gain for the politicians identified with the positive changes. Social researchers in Africa have in the past explored the instrumentalization of the provision of social welfare services and their importance to the legitimization of regimes (Cornwall et al., 2007). Secondly, for the political elite, appearing to be addressing gender issues is also likely to earn the government donor money.

A rather significant advantage of focusing on poor and younger women and presenting them as innocent victims is that it allows for the shifting of blame away from women to societal and economic factors that expose them to unwanted pregnancies, such as economic pressures and state-sanctioned gender inequality. By insisting that rich women often are able to access safe clandestine abortions, pro-abortion discourses present poverty as a major factor in exposing poor and teenage women to unwanted pregnancies and the attendant unsafe abortions. Abortion is thus presented as a practice firmly rooted in socioeconomic troubles. A senior state officer working with an independent government commission explained that:

The level of poverty in this country has gone up, and as a result, women and girls are getting vulnerable to sexual advances. Think of a woman who has to survive, has to put food on the table for her children. The only way out is to sleep with a man who will give her money to buy a packet of *Unga* [flour] and it is happening in Ukambani. It was on TV the other day. So, would you call that woman immoral? How about female students at the university? Most students are poor, they come from poor families and they cannot afford to pay for their needs and the government is not providing anything for them, not even accommodation and food. What do you expect? Every Friday, as I am going to... university, I see all these big vehicles heading towards the female hostels. I am horrified by the number of old men picking those girls and going with them. Most of them are leaders, our leaders whom we know. I keep wondering, for these old men, where is their morality when they go stripping naked to a child who could be their grandchild? (NSA7)

Another research participant working with reproductive health organisations also saw abortion as a problem emanating from economic considerations:

What I know is that there is no woman in her right senses who wants to get pregnant so as to have an abortion. Because many of these women are poor, they usually wonder how they can bring another mouth to feed if they cannot even feed their own mouth. How can anyone condemn an IDP (internally displaced person) or a street woman for having an abortion? (NSA2)

These quotations implicitly justify abortion for the girls and women involved. Abortion as an option is interpreted as emanating from socio-cultural and political circumstances over which the girls and women have no control, and hence, they are portrayed as deserving pity rather than reproach and condemnation. This

observation is confirmed by research which has shown that women from developing countries resort to clandestine and unsafe abortion as one of the few responses available to them given their lack of control over sex, lack of contraceptives, and the prevalence of culturally-defined fertility patterns (Lane et al., 1998, p. 1089). Abortion is thus seen as presenting the only key strategy for managing unwanted pregnancies that can not only worsen women's economic circumstances, but could also conflict with their future aspirations such as education, career and/or marriage.

By presenting women who undergo unsafe abortions as victims of unintended circumstances, pro-abortion discourses seek to transfer blame not just to women's economic conditions but more so to circumstances, such as gender inequality, which may be responsible for unwanted pregnancies. This is what makes the inclusion of poor *married* women in the construction of victims of unsafe abortion particularly intriguing. An obstetrician-gynaecologist at a Nairobi city public hospital who participated in this study said that about 60 per cent of the women who sought post-abortion care services at the hospital were in a marriage union. This was followed by single women at 22 per cent, divorced or separated women at 12 per cent, while widowed women constituted only 4.4 per cent (NSA17). His observations are echoed by a study carried out by the Guttmacher Institute, which also found that 59 per cent of women admitted to a hospital in the Western Province of Kenya for post-abortion care were or had been married. Of the women, seventy one percent were housewives or unemployed (Guttmacher Institute, 2008).

As noted in Chapter 5, the Kenyan Parliament has in the past failed to legislate against marital rape, with claims that there could be no rape in African marriages since sexual availability is implicit in the marriage contract. While high rates of abortion among married women could be linked to infidelity, it could more likely be a pointer to the unequal nature of Kenyan marriages and, perhaps, women's inability to access contraceptives and the government's failure to provide them. Official figures from the government show that only 46 per cent married women use contraceptives (Okech et al., 2011), while 24 per cent of married women in Kenya have unmet contraceptive needs due to difficulties in accessing the necessary family planning facilities (Ian et al., 2009; Republic of Kenya, 2009).

An additional significant feature in the discursive construction of women who have abortions is the association that pro-abortion actors draw between the failure to provide safe abortion and Kenya's inability to meet larger development goals, among them the Millennium Development Goals and Kenya's Vision 2030.¹⁵³ A pro-abortion activist working with an international women's organisation argued that "In order for Kenya to achieve Millennium Development Goal 5 on Improving Maternal Health, it is imperative that the issue of unsafe abortions is addressed, since this is a major contributor to the high maternal mortality rates in the country" (NSA12). The same idea was echoed by another participant from the Ministry of Gender, who also wondered how the Kenyan government intended to achieve the 2030 vision if women continued to die and suffer from a preventable problem (SA1). There thus appears to be a strategic attempt to align pro-abortion discourses with those that are most resonant with wider national development plans. This is not only expedient for the purposes of winning popular and elite support, but also for forestalling opposition attacks through connecting access to abortion with caring about the society as a whole. By claiming that unsafe abortion is a hindrance to the attainment of development goals in a developing country, pro-abortion activists hope to influence policy and practice.

From the above discussion, an emergent shared characteristic of women victims of unsafe abortion in Kenya seems to be poverty, whether young, married, single or divorced. A logical conclusion to draw is that Kenyan women will continue to resort to unsafe induced abortion as a shield against the negative socioeconomic consequences of unplanned entry to motherhood. To elaborate the importance of abortion to women facing unwanted pregnancies, a reproductive health practitioner (NSA19) said that despite the numerous national media campaigns to sensitise the public to the dangers of sexually transmitted diseases through unprotected sex and multiple partners, most Kenyan users of emergency contraception (EC) were much more afraid of getting pregnant than they were of contracting HIV/AIDS. He said that 79 per cent of women identify pregnancy as

¹⁵³ Kenya Vision 2030 is the country's development blueprint covering the period 2008 to 2030. It aims to transform Kenya into a newly industrializing middle-income country providing a high quality life to all its citizens by the year 2030 (Republic of Kenya, 2007).

their biggest fear, while only 45 per cent consider the risk of contracting HIV/AIDS through unprotected sex. Quoting from a study carried out by the Population Council, this participant noted that:

Fifty-seven percent of women purchasing EC reported having infrequent sexual intercourse or sexual intercourse on an irregular basis. Nearly half (45%) of the respondents agreed that they might be at risk of getting HIV. Three-quarters (74%) indicated that it would be a “big problem” if they found out that they were pregnant, but only 38% reported using a modern method of contraception. (Keesbury, 2009, p. 12)

These findings correspond with claims made by two other participants, NSA2 and NSA4, who, while explaining the danger of neglecting family planning goals at the expense of HIV/AIDS prevention, said that:

We conducted a survey on the use of condoms, the pill and injectables as contraceptives. Do you know condoms came last? When we asked women if they preferred to use pills, condoms or the injection, condoms came last as the most preferred contraceptive method. The injection came first because it is very easy to use and to conceal.¹⁵⁴ This was followed by the pill. This clearly shows you that the greatest danger that women perceive is pregnancy, not HIV/AIDS. That is why condoms came last. (NSA2)

When HIV/AIDS was declared a national disaster, there was a big, big campaign on how to prevent infection. The Ministry of Health went on an overdrive, subsidizing male condoms and distributing them and right now, a packet of male condoms is 10 Kenya Shillings (less than one cent USD). However, it is so ridiculous. Now statistics are showing that women are the largest buyers of male condoms because women are the ones who think about safety, sexually transmitted diseases and contraception. Unfortunately, although they have to buy the male condom, they have to negotiate with a third person again, they don't have control of contraception. A packet of three female condoms costs about 400 Kenya Shillings (\$5 USD). How come it is not subsidized when these are condoms women have control over? Why would the government choose to subsidized one gender and not the other when women are also taxpayers? (NSA4)

¹⁵⁴ A significant number of research participants noted that because men often do not support contraceptive use, women normally go on birth control behind their men's backs. In such circumstances, they are likely to choose the method that is easiest to conceal.

The above research participants' claims are supported by the Kenya Demographic and Health Survey (2009), which showed that only 32 per cent of women and 37 per cent of men who reported having multiple sexual partners said they had used a condom during their last sexual encounter. The deputy head of the Department of Reproductive Health at the Ministry of Public Health, Dr Shiphiah Kuria, is also on record as having warned of a trend where women were more concerned about getting pregnant than contracting sexually transmitted infections (Wanja, 2010). This health expert said he was alarmed by the high usage of emergency contraceptives, especially on weekends and public holidays, although about 90 per cent of the users understand the method does not protect against STIs and HIV/AIDS (ibid.). For example, a survey carried out at the University of Nairobi found that only 43 per cent of students used condoms every time they had sex three months before the survey, meaning that 57 percent did not always use condoms (Ngirachu, 2010). Surprisingly, most of the students acted in full knowledge of the risks involved, since 77 per cent had been previously tested for HIV/AIDS and knew their status (ibid.).

Although Kenyan women's behaviour can easily be explained as being informed by the knowledge that sexually transmitted infections, including HIV/AIDS can be hidden, whereas pregnancy and the attendant stigma cannot, it may also be a pointer to women's inability to negotiate safe sex, as a result of the patriarchal nature of both the government¹⁵⁵ and Kenyan society in general. This is well said by Nairobi's street women, who explained to a newspaper reporter that their attempts to avoid sexually transmitted diseases and unwanted pregnancies often fail because the street boys with whom they live often force them to have unprotected sex (Mwololo, 2011). One street woman explained that she fears pregnancy more than she does sexually transmitted diseases like HIV/AIDS because, "*Enyewe, singetaka kuzaa tena. Ukimwi sio mimba, huwezi jua ikikushika.*" (I wouldn't want to get another child. Unlike pregnancy, HIV is hidden) (ibid.). As such, it is plausible to conclude that constructing victims of unsafe abortion as young and poor allows for attention to be directed to the

¹⁵⁵ It can be argued that the Kenyan government's failure to subsidize female condoms relates to neglect and lack of prioritization of women's issues by politicians and policymakers.

structural factors that expose women to unwanted pregnancies, rather than their behaviour.

On this basis, I argue that the image of victims of unsafe abortion created by pro-abortion actors is not a coincidence. Rather, it is intended to produce a category of individuals capable of attracting the sympathy of both the public and policy makers in a context shaped by patriarchal and neo-patrimonial politics. Patrimonial and clientele relationships push leaders into serving the interests of their political supporters, including, in most instances, tribal patriarchs and religious leaders, who are unlikely to support women's right to safe abortion. However, it should be noted that although deeper causes of unsafe abortion that lie in poverty and gender discrimination in the society are brought to the fore, the political claims regarding abortion rights are not acknowledged. As such, although this strategic framing of pro-abortion discourses is expedient for the purposes of influencing policy and gaining public support, it does not address a core feminist issue in terms of women's right to control their own bodies. As will become clear in the next sections where the pro-abortion discourses of health, economics and rights are discussed, this depoliticisation of abortion has ensured that a women's rights discourse on abortion remains outside the core agenda of abortion politics in Kenya.

7.3. Pro-abortion Discourses in Kenya

7.3.1. Abortion as an Issue of Public Health

A straightforward public health problem with a known solution has been allowed to become the killing fields of women in developing countries, particularly Africa (Sai, 2004, cited in International Planned Parenthood Federation (IPPF), 2006, p. 3).

As noted in the above quotation, public health abortion discourses in Kenya, as elsewhere in Africa, focus attention on the health problems encountered by women due to unsafe abortions. Those in support of abortion law liberalization argue that thousands of women die and many more suffer irreparable harm as a result of dangerous procedures conducted by unskilled persons. A pro-abortion Professor of obstetrics and gynaecology who participated in this research noted that:

Official Kenya government statistics indicate that more than 800 women procure unsafe abortion every day. As a result, 30 to 50 per cent of all maternal mortalities in the country are as a result of unsafe abortion. (NSA7)

This participant's claims are supported by both the government and non-state organisations which have demonstrated that more than 2,600 women die annually from complications of unsafe abortion, while a further 21,000 are admitted to public hospitals with complications (Geberselassie et al., 2005; Guttmacher Institute, 2012). As a result, women with unsafe abortion-related complications occupy more than 50 per cent of maternity beds in public hospitals. It is however important to note that although this figure was commonly used by pro-abortion actors, it was discounted by anti-abortion actors and by an officer from the Ministry of Health who said abortion related bed occupancy was about 20 per cent. He explained that there had been a reduction after the introduction of the manual vacuum aspiration (MVA) which meant that patients spent less time in the hospitals. He claimed, "They stay for a maximum of 24 hours since there is no need for women to be taken to the theatre" (SA2). Still, a majority of pro-abortion research participants were of the opinion that these figures may actually be underestimated since most studies in Kenya are hospital-based and use medical records which may omit clandestine abortions. Moreover, since there are restrictions on induced abortion, health facilities may deliberately fail to record abortion as a cause of death. It is also possible that for every woman who seeks medical care at a government facility, many more have other complications and usually seek out homemade cures, pharmacists or some other untrained persons for assistance.

A senior official of the Kenya Obstetrical and Gynaecological Society (KOGS) observed that pregnancy-related deaths and suffering could be avoided if the government lifted restrictive laws on abortion so as to save the lives of women who seek the service illegally (NSA13). This participant explained that maternal mortality in Kenya has remained unacceptably high. Kenya's Demographic and Health Survey (KDHS) of 2008/9 reported a maternal mortality ratio of 488 per 100,000 live births, which translates to approximately 8,000 pregnant Kenyan women dying each year from pregnancy-related complications (Kenya National Bureau of Statistics & ICF Macro, 2010). A study by the Ministry of Health in

2003 also identified unsafe abortion as one of the top five causes of maternal deaths:

The FIVE TOP CAUSES--the BIG FIVE--or the TERRIBLE FIVE--of maternal deaths are haemorrhage, infections associated with delivery, hypertension induced by pregnancy, obstructed labour due to poorly-monitored labour or delay in taking needed action and abortion that is procured unsafely and/or by untrained providers. (Otieno-Nyunya, 2004, p. 6)

Deaths from unsafe abortion were also the concern of a female former Member of Parliament. She noted that:

Those opposed to abortion don't want to talk about the lives of women. So I am like look, during the bomb blast,¹⁵⁶ over two hundred Kenyans died and we were all so shocked. Yet in any given year, it is estimated that over two thousand women die due to abortion complication. Where is the lowering of the flag? How can there be such silence? Who are we to keep silent when so many women are dying? How can the Church accept these deaths? (NSA4)

A notable characteristic of the focus on deaths from unsafe abortion is the attention paid to the fact that the problems result from the procedures being performed by untrained persons. As such, reports by pro-abortion actors are often accompanied by detailed information of the unhealthy conditions in which back-street abortions are procured. For example, in a story reported by IRINnews (2009), a self-confessed abortionist told the reporter that, "They [the women] come to me and each pays me 50 shillings [US\$0.70]. Most of them are sex workers who operate here in Majengo [a slum] and have conceived by mistake." She said she uses a concoction of herbs to induce abortion, and admitted there were fatalities. However, she commented, "Even qualified drivers at times cause accidents; I do not do this job to kill anyone, but at times some are unlucky and go together with the child they came to abort" (ibid.).

The concentration of pro-abortion discourses on the economic and social circumstances in which complications and deaths from unsafe abortions occur may not be a coincidence. Rather, this is a strategic effort which enables pro-

¹⁵⁶ More than 200 Kenyans were killed in a bomb blast at the American Embassy on 7 August 1998.

abortion actors to focus on the unhealthy conditions in which unsafe abortions are offered. This in turn provides them with the opportunity to demonstrate that if abortion were offered by trained health professionals, related deaths and health complications would be eliminated. By so doing, the health discourse posits that liberalising abortion laws can have a dramatic impact on reducing mortality and morbidity, which, even anti-abortion activists agree need to be reduced. In support of this claim, a pro-abortion research participant (NSA4) gave the example of South Africa where the liberalisation of abortion laws in 1996 reduced the incidence of infection resulting from abortion by 52 per cent and that of maternal mortality by 92 per cent. This pattern has been repeated in Turkey where, since the passage of a law legalising abortion, maternal mortality due to unsafe abortion almost disappeared, and the burden of unsafe abortion on the health care system greatly decreased (Shah & Ahman, 2009).

Additionally, pro-abortion actors' focus on the circumstances in which unsafe abortion occurs enables the shifting of blame away from women and abortionists (as presented by anti-abortion activists) and towards external agents, such as the state and religious organizations, which, by stigmatising abortion, make women submit to procedures that threaten their lives. On the one hand, the state is accused of failing to provide contraceptives and access to safe abortion and, on the other, it is charged with failing to provide sex education. As a pro-abortion research participant explained:

I don't think women have abortions for fun. Women have abortions because they feel they have no other choice and the government does not give them other choices. Abortion should be solution based. First of all we need to understand the real reasons why all this is happening. A lot of the abortions can be reduced if contraception is widely available. And maybe we should start discussing whether or not and in which circumstances we should provide girls who are not yet adults with contraception. Of course that is another controversial area, but we must talk about it because we know from the age of twelve, girls have become sexually active and it has become fashionable to have more than one boyfriend and using condoms is not cool. So we have these kids doing this. What are the options? I hear people talk about abstinence, which is wonderful but we must do much more than 'chill' because actually, these kids are not chilling. Until we have that discussion, thousands of women will continue to die every year from unsafe abortion. (NSA4)

This participant suggests that if the Kenyan government provided sufficient access to contraceptives, the number of unwanted pregnancies and the attendant unsafe abortions would be minimised. In fact, a majority of research participants, both anti and pro-abortion, acknowledged the relationship between unwanted pregnancies and unmet need for family planning as a key issue. A research participant working with the governmental body on population and development said the country has a 24 per cent unmet need for family planning. Although this was mainly blamed on reduced funding for population and reproductive health programmes as a result of the diversion of funding to HIV/AIDS, the state's prioritization of curative over preventive services was also problematised (NSA5). This participant explained that "reproductive health issues are not seen as important because unlike diseases like HIV/AIDS, tuberculosis, and malaria, pregnancy-related issues are considered normal. If a woman is pregnant, they see it as just natural."¹⁵⁷ Treating pregnancy-related issues as *normal* has the effect that little funding is allocated to maternal healthcare, and the social, political, cultural and economic factors that play a strong role in women's health are strategically ignored. Moreover, as NSA5 elaborated, politicians often are unwilling to spend money on an issue that is not only controversial but also rather private. As this research participant explained, "You see, if an MP's constituents were dying of malaria or cholera for example, he/she will be very quick to call a press conference and demand government action. It is highly unlikely that any politician will openly campaign for family planning or abortion, unless they want to lose their seat in Parliament."

At a political level, too, Kenyan politicians were also said to be uncommitted to family planning and population control, and that the introduction of Kenya's population policy was to access donor money rather than out of genuine conviction (Chimbwete & Zulu, 2003; Kulczycki, 1999; Thomas, 2003). In fact, some senior politicians have openly expressed suspicion that family planning was imperialistic and a genocidal plot. A former Vice President in the post-independence government, Oginga Odinga, for example argued that population control was unnecessary, since Africa remained a sparsely populated continent

¹⁵⁷ Kulczycki (1999) has claimed that one of the reasons behind the continued lack of recognition of problems resulting from unsafe abortions in Kenya is the fact that ill health is generally perceived as a natural part of being a woman.

(Warwick, 1982). Similarly, although his government continued to receive donor money, President Kenyatta never publicly supported family planning and forbade his name or photograph from being used in any family planning campaigns (Thomas, 2003).¹⁵⁸ Additionally, as a result of tribal and ethnic politics, some politicians, instead of encouraging family planning, have continued to urge their supporters to have more children so as to boost their populations. The Deputy Director of the National Council for Population and Development Board, Mrs. Vene Lumumba, is noted to have warned:

This [encouraging constituents to have more children] is one and very bad thing political leaders have done. While we are encouraging Kenyans to adopt family planning methods to avoid increase in population, they are encouraging them to give birth to as many children as they can so that they can have many electorates in their constituencies. Our efforts are being undermined and this is contributing to the level of poverty as Kenyans give birth to children and they are unable to bring them up. (Musyoka, 2012)

The behaviour of Kenyan politicians is similar to that of politicians in Western political systems who, as noted by Lovenduski and Outshoorn (1986), have often been unwilling to take a stand on issues that could potentially lead to loss of Parliamentary seats. Considering the patriarchal and neo-patrimonial nature of the Kenyan political environment (as shown in Chapter 5), politicians and policy makers usually choose to concentrate on the more populist curative policies. Supporting an issue which could potentially *encourage women to become immoral*, or one that could provide political opponents with ammunition to question their Africanness and/or religious faith, reduces the chances of the elite publicly supporting such legislation. It is therefore possible to conclude, alongside Cohan (1986), that:

Abortion as a problem has remained at the margins of issue consideration for many reasons, two being the inferior status of women within the polity and the close supervision of such questions with a moral element by the religious institutions of society invariably controlled by men. (p. 27)

¹⁵⁸ In fact, contraceptive commodities were incorporated in the national government budget for the first time in the country's history in 2005 (Chrichton, 2008).

Kenyan leaders' need to appear morally upright in the eyes of significant constituents, such as religious organisations and local patriarchs, was also identified as being behind the government's inability to provide sex education. A research participant working with a youth organisation (NSA2) said this was unfortunate because his organisation's study on adolescent sexuality had shown that sex education at the early stages of life can significantly prevent unwanted pregnancies. In Kenya, sex education can only be offered in the context of teaching about HIV/AIDS. To this participant, this has meant Kenyan teens have little or no knowledge on how to prevent pregnancy, since the little sex education they receive promotes abstinence as the only means of prevention (See Chapter 5). As a result of a campaign urging young people to *chill* or abstain from early sex, many young people in Kenya who know about the condom only know it as a means of preventing HIV/AIDS infection, but not as a birth control measure. This lack of information was identified as a major factor in unwanted pregnancies and abortion in Kenya:

Abortion is mainly a youth problem. And it is essentially due to lack of information because they indulge in sex, yet they don't know the dangers and they don't know how to protect themselves. I have talked to the young people and they are confused. They really don't know that you can use a pill and even they don't know where to get the pill. They don't know that the boy can use a condom effectively. When they indulge in sex and the girl gets pregnant, the boy disappears. The girl must deal with it. So it is lack of information, correct information. (NSA5)

This participant also identified confusion among government ministries as well as parents for the lack of proper information. He explained that:

The HIV/AIDS policy requires information and services to be provided to any one that is sexually active, without specifically mentioning schools. But, on one hand, the Ministry of Education does not permit provision of information on contraceptives and condoms. On the other hand, youth reproduction policies are run by the Division of Reproductive Health (DKH) which is under the Ministry of Health. Since schools operate under the Education Ministry, heads of schools follow the Ministry's guidelines rather than those from the Health Ministry. Secondly, parents are also a problem. It is very difficult for parents to allow you to talk to the young people about reproductive health. There seems to be a feeling that doing so would make young people sexually active. Besides, the society seems to assume young people don't have sex. (NSA5)

Insufficient information on contraceptives is presented as a leading cause of unwanted pregnancies in the above texts. But, the government and the society at large are also presented as culpable. By failing to provide relevant sex education and contraceptives to young people, adults shut their eyes to the truth about teenage sex. But more importantly, avoiding dealing with the issue also makes it possible for those concerned to ignore their own contribution to the problem. For example, as noted in Chapter 5, lack of supervision in schools, as well as the absence of parental guidance, have been identified as two of the contributing factors which have led to an increased incidence of teenage pregnancies. This focus on contraception serves two functions: first, pro-abortion actors are able to present themselves as not being only interested in abortion, but also in the prevention of unwanted pregnancies. Secondly, it makes it possible to challenge anti-abortion activists who construct them as *abortion addicts*.

The public health discourse on abortion in Kenya has also focused on the amount of medical attention required by women who have incomplete or septic abortions, which they contend, negatively affects the management of other patients. Such patients were said to absorb much of nurses and doctors' working time, leaving Kenyan hospitals unable to attend to or admit other patients. This argument pointed to the fact that if legalised, abortion would be much safer and cheaper, as it would be openly performed in licensed clinics with better facilities. This was made clear by a senior lawyer at FIDA who said:

Instead of watching women die out of having unsafe abortions, or women being hospitalized and the government using a large percentage of its resources to then treat women who have had incomplete or unsafe abortions, why not then provide legislation whereby women feel safe and comfortable in terms of coming forward to have a termination of pregnancy? (NSA12)

In response to the claims of anti-abortion discourses that legalisation of abortion would lead to increased cases, pro-abortion actors argued that since legal restrictions had not ensured fewer abortions, decriminalisation would just move abortions from the backstreet into proper medical facilities. In fact, in countries such as Belgium, Germany and the Netherlands, where safe abortion is widespread and modern contraceptive use is high, the abortion rate is very low at 10 per 1000 women of reproductive age, whereas in Africa, despite the legal

restrictions, abortion rates are high at 30 per 1000 women of reproductive age (Sedgh et al., 2007). Legislating against abortion can also be seen as responsible for preventing victims of unsafe abortion from seeking timely post-abortion care due to fear, ignorance about services, and stigma, in addition to the prohibitive cost of post-abortion care. As a result, the majority of women go to public hospitals only when complications are severe and complex, requiring more resources and extended hospital stays.

In relation to the consequences of unsafe abortion, it is worth noting that complications and costs related to unsafe abortion could be significantly minimised by the use of the drug, misoprostol. At the time of my fieldwork in 2009, the Kenya Obstetrics and Gynaecological Society of Kenya (KOGS) was in the process of negotiating with the government on the mechanisms of expanding the registration of misoprostol to include use for gynaecological purposes,¹⁵⁹ since at that time, it was registered for use only as treatment for stomach ulcers and as a painkiller. According a medical doctor who participated in this research (NSA17), because the drug is inexpensive, retailing across the counter for as little as 240 Kenya shillings (roughly USD\$3), it would be useful in saving the lives of many women who might otherwise die from unsafe abortions. The drug's easy accessibility and low cost could however create a problem. For example, during my fieldwork, I was able to purchase the drug from a couple of pharmacies without a prescription.¹⁶⁰ Surprisingly, in all instances, I was neither asked why I needed the drug, nor was I provided with instructions on how to use it. Although such laxity exposes women to considerable danger – since the drug, if not properly administered, can potentially be fatal (Briggs & Wan, 2006), – it should not be overlooked that to some extent, the easy availability of misoprostol provides a challenge to the medicalization of abortion by offering the prospect of abortions being available to women without the involvement of doctors.

¹⁵⁹ In July 2009, Kenya registered misoprostol for the treatment of incomplete abortion and miscarriage as a strategy for preventing maternal deaths due to complications of abortion.

¹⁶⁰ This is in spite of a 2008 study which showed that although 42 per cent of pharmacies in Nairobi had misoprostol available for sale, only 12 percent of pharmacists agreed to dispense misoprostol to mystery clients for abortion induction (Ong'ech et al., 2008).

The public health discourse was also used by doctors at a personal level to justify their willingness to illegally provide abortions for women. When I asked one doctor why he performs abortions, he explained:

When I completed medical school, I promised myself never to perform abortions. So, when a young woman came to me and requested the procedure, I turned her down. However, after about one week, as I looked through a newspaper, I saw her picture in the obituaries page. Although it wasn't stated, I knew what had happened and I have never been able to forgive myself. In a way, I have always blamed myself for her death. If I had performed the procedure, for which I am qualified, the girl may well be still alive. Since then, I promised to do it for any woman and although I have publicly declared my support for legalisation, I have not been arrested but have received death threats from anti-abortion crusaders. I have said should this happen, the writing on my grave should read, "Here lies a man who died of abortion." (NSA13)

Further, although doctors have often been accused by anti-abortion activists of pushing for abortion legalisation for economic gain, this is unlikely to be their primary motivation. As this doctor argues, if abortion were legalised, it would be free of charge in public hospitals.

It is worth noting that the public health discourse has had the impact that even without an abortion liberalization law, the government has been able to provide post-abortion care, although at the risk of being accused of supporting abortion. I argue that this is a reflection of the fragmented and contradictory nature of the Kenyan government, reflected in the behaviour of political leaders, as discussed in Chapter 5. Because of the neo-patrimonial and winner-takes-all kind of politics in which being in or out of government determines one's access to economic wealth, leaders in Kenya avoid taking a position on abortion as this could lead to either gaining or losing votes from abortion proponents and opponents. Analysis of policy-making across different contexts has shown that individual politicians and bureaucrats often play central roles in championing issues as well as getting them onto the policy agenda (Grindle & Thomas, 1991; Shiffman, 2007). Consequently, if Kenya's bureaucracy perceives no political benefits in championing legalised abortion, the issue is not only unlikely to attract political entrepreneurs to champion it, but it is also likely to be deprioritized and only referred to *in passing*. For the State, however, I contend that the *middle road* position on abortion and

the provision of post-abortion care in public hospitals is an attempt to impress and build links with the international community, in the hope of accessing international funding. In Kenya, donors' contribution to the health sector is relatively large and has increased dramatically in the last decade (Chuma & Okungu, 2011). In 1994, for example, donor funds accounted for 8 per cent of the government's total health expenditure. This proportion increased to 16 per cent in 2001/2002, 31 per cent in 2005/2006, and 40.6 per cent in 2008/09 (ibid.). Although the greater proportion is spent on HIV/AIDS and malaria, the significant amount spent on reproductive health provisioning can be considered an incentive for the Kenyan government to try to impress international donors (Crichton, 2008).

In sum, then, the pro-abortion public health discourse in Kenya posits that access to abortion is a crucial part of ensuring high quality healthcare for women. This is because criminalizing abortion not only exposes women to health complications and death as a result of the procedures being performed by unskilled individuals, but it also inevitably delays abortion, which therefore increases risks to women's health and raises the cost of procedures. As I have shown, the public health pro-abortion discourse is the most favoured by pro-abortion actors because it is easy to *sell* to both political leaders and policy makers. In the next section, I demonstrate how the direct costs of treating abortion complications burden impoverished women, while indirect costs drain the national economy.

7.3.2. The Economic Cost of Abortion

Pro-abortion economic discourses in Kenya pay attention to the material cost of abortion related problems and to the advantages that would accrue, for both individual women and the national economy, if abortion were decriminalized. Unsafe-abortion related morbidity and mortality is presented as imposing a huge cost on the lives and health of Kenyan women, while at the same time burdening the country's public health system. The following excerpt from a publication provided by one of the organisations that I visited during fieldwork clearly captures the economic losses that may accrue to individual women as a result of an unsafe abortion:

In order to earn money to feed her family, Sarah was forced to leave school at age 13. When she couldn't find work washing clothes she would have sex with men for money. She would earn 100 shillings (less than \$2.00 USD) from these encounters to buy food for the family. When Sarah became pregnant, a woman in Kibera¹⁶¹ advised her to get an abortion. Sarah procured an unsafe abortion from the woman's friend, and soon developed a dangerous, life-threatening infection which left her in great pain and bed-ridden for a month. The cost of emergency healthcare and the fear of arrest kept her from going to a hospital. Sarah and her mother were afraid to talk to anyone about how sick she was because of the risk of arrest and the fear of community condemnation. Sarah died at home on June 29, 2009. Her family now goes for days without food and survives on hand-outs from neighbours in Kibera (Center for Reproductive Rights, 2010).

As demonstrated by Sarah's case, in addition to the morbidity and mortality associated with unsafe abortion, women and their families also incur economic losses. The economic costs are related to loss of productivity and increased health problems for those women who survive, as well as the impact on their extended family. A research participant (NSA5) noted that in Kenya, a significant number of women who have abortions have other children, are in relationships, and are usually not procuring their first abortion. As such, the possible death of a woman or even a long incapacitating complication would exact a heavy economic toll on her family. This is more so in Kenya where women can be responsible for up to 100 per cent of household income and for the welfare of their families. In fact, according to the World Health Organisation, an estimated quarter to half a million children around the world lose their mothers each year as a result of unsafe abortion (Grimes et al., 2006). These children are more likely than children with two parents to receive inadequate health care and social services such as education, and are more likely to die at an early age (World Health Organisation, 2005).

Moreover, as noted above, due to a variety of factors, unsafe abortion tends to affect poor women in Kenya. Consequently, it is likely that monetary costs for the procedure, as well as the cost of post-abortion care, can further increase women's poverty. The fact that abortion is criminalised means that the cost of abortion

¹⁶¹ Kibera is an informal settlement [a slum] in the outskirts of Nairobi

services is unregulated and is therefore generally high. As such, poor Kenyan women, who normally have to wait longer to confirm their pregnancies due to lack of access to pregnancy tests (NSA4), usually defer abortion until their second trimester, by which time they will have saved enough money for the payment. Unfortunately, second trimester abortions are more often accompanied by greater complications, longer hospital stays, and, inevitably, greater expense. The observation that unsafe abortion affects poor women is important as it confirms Critical African Feminist Perspective, which recognises that the female subject is not a homogeneous category, and as such, depending on class, Kenyan women experience abortion differently.

At the national level, the treatment of abortion-related complications in public hospitals was said to consume significant resources, including hospital beds, blood supplies, medications, and often operating theatres, anaesthesia and medical specialists (Kiberenge & Kiarie, 2010). NSA6, a pro-abortion health professional, noted that:

The impact on the resources of Kenya's healthcare system is enormous. For example, as much as 60 per cent of the resources of Kenyatta National Hospital's maternity ward are being taken up by victims of unsafe abortions. If you walk into that ward, you will be surprised to discover that more than half of the women have not given birth. In fact, it would be better if they had because having a baby is almost 10 times cheaper than treating a victim of unsafe abortion. (NSA6)

Another research participant, the head of a health institution in Nairobi, said that the approximate annual cost of the management of complications resulting from unsafe abortions to be about 300 million Kenya shillings (about USD \$4 million). He explained that treating complications from unsafe abortion significantly strains the already limited funds, staff, and medical supplies available to Kenya's public health system by diverting scarce resources to an easily preventable public health problem.¹⁶² At the regional level, the annual cost of unsafe abortion in Latin

¹⁶² The funding issue is exacerbated by the fact that the government of Kenya allocates little funding to health care services. In 2001, African heads of states met in Abuja (Nigeria) and committed to allocating at least 15 per cent of annual budgets to the health sector. In Kenya however, government spending on health is not only less than half of the Abuja target and has been declining, but also Kenya has the lowest allocation in East and Southern Africa (Chuma & Okungu, 2011).

America and Africa is estimated to be between US\$159 million and US\$333 million (Vlassoff et al., 2009). These figures seem to suggest that if legalised, funds spent on complications resulting from unsafe abortion could be put into better use such as providing contraceptives.

Seemingly, the economic burden of unsafe abortion to households and on health systems is great, given both the scale of the problem and the high cost of treating complications. This pro-abortion economic discourse implicitly suggests that alternatives to unsafe abortion, such as contraception or safe abortion services, are more cost-effective. Although this argument strengthens the case for the elimination of unsafe abortion, it is evident that like the public health discourses, it fails to raise the issue of women's right to control their own reproductive capacities. Abortion as a women's right is discussed below.

7.3.3. Human Rights Abortion Discourses in Kenya

As has already been established, the most commonly used pro-abortion discourses in Kenya include public health, with explanations of the social, political and economic causes of unsafe abortion, and descriptions of consequent suffering and deaths. Pro-abortion discourses make note of the culpability of government policies and societal stigmatisation in causing unwanted pregnancies and unsafe abortions, and also the roles of poverty and gender discrimination. In this section, I focus on the pro-abortion rights discourse. It will become apparent that due to multiple factors, discourses framing abortion as a women's right are largely absent in Kenya.

Around the world, feminist and women's movements have been at the forefront of campaigns for abortion liberalization. Most feminist movements define reproduction in terms of a woman's right to choose, and the liberalization of abortion is usually represented as an indispensable condition for achieving reproductive freedom and gender equality (Engeli, 2009; Fegan, 2002). However, as noted earlier in this chapter, an abortion rights discourse is generally absent in Kenya because pro-abortion actors, led by medical professionals, focus more on public health and economic discourses, which in turn have had the effect of silencing a rights discourse. Thus, although some women's and human rights organisations have actively participated in the abortion debate, they too make

reference to the health discourse in their *public* debates for abortion law liberalisation. In this context, I use the term *public* to refer to situations where a generalised audience may be the target, such as press addresses. Notably though, when the same actors participate in what I refer to as *private* contexts, such as organisational publications, conference presentations and even during interviews for this research, the majority of the actors make reference to women's right to control their reproductive capacities. For example, when asked how FIDA-Kenya defines abortion, a lawyer within the organisation explained:

In our Draft Reproductive Health and Rights Bill 2008, we are looking at abortion as a health issue because a lot of women are dying. Even for those women that do not die, many end up with lifelong disabilities so that they are unable to live normally afterwards. Again, women are affected economically because they spend their little money in paying for treatment after developing complications or in paying for the abortion itself.

It might have been expected that FIDA-Kenya, being a lawyer's organisation, would articulate pro-abortion discourses in the language of democracy and human rights. However, this participant's observation of a Draft Bill that was to purportedly guide abortion law liberalization in Kenya makes no reference to women's rights to safe abortions. Surprisingly though, when the same participant talked about her own opinion on abortion, she was categorical that, "all women have a right to decide when to have children." Contextually differentiated discourses are also identifiable in the case of women political leaders such as Martha Karua, a former Minister of Justice and Constitutional Affairs. In 2004, while addressing a workshop on maternal deaths and unsafe abortion in Kenya,¹⁶³ the minister observed that:

[Various] factors will influence a woman's decision on whether to carry the pregnancy to full term or seek abortion. Given the complexity of this decision, the only person equipped to make this decision is the pregnant woman herself. Neither family, nor the clergy, her community or the government has the capacity to make the decision for the woman. History and statistics have shown that when women are determined to terminate an

¹⁶³ The workshop was organised by the Kenya Medical Association and Kenya Obstetrical and Gynaecological Society in collaboration with Member Associations of Advocacy for Reproductive and Sexual Health and Rights in Kenya.

unintended pregnancy, if necessary, they will risk their lives to do so irrespective of the law or religion. (Karua, 2004, p. 45)

In this case, it appears the Member of Parliament fully recognizes a woman's right to an abortion when it is desired. However, when commenting on the issue of abortion during discussion of a draft Constitution in 2010, she said:

The clause on abortion says that "abortion is not permitted" which clearly indicates that abortion is not legal. The misconception has been that the Draft Constitution legalizes abortion and this is simply not true. The only thing that is permitted is a medical procedure to save the life of a mother¹⁶⁴ or in the event of an emergency as determined by a health professional.

In the current Constitution abortion is not mentioned. It is however an offence under our Penal Code to procure an abortion and both woman and doctor are liable to prosecution. The Medical Practitioners Act ensures medical procedures that result in the loss of a pregnancy undertaken when the life or health of the mother are in danger are not liable for prosecution. Otherwise by law, doctors would even be unable to save women who by nature suffer miscarriage which medically is also known as an abortion.

Overall, the law as it is today in our books has actually been elevated to the Constitution and given stronger provisions. It is important that we therefore understand in a comprehensive way what exactly is in the Draft Constitution and what it means before we outright reject a document that is actually good and paves the way for us as a country to move forward.¹⁶⁵

It is clearly evident that in this case, the female parliamentarian does not articulate her earlier belief in a woman's right to an abortion. Rather, she dwells more on the health perspective and actually also makes reference to morality when responding to a question on whether she supported the Health Reproductive Rights Bill 2008¹⁶⁶ which provided for abortion on specific circumstances. She explained:

¹⁶⁴ It is notable that she avoids referring to the fact that the draft Constitution also allowed for abortion in instances where a pregnancy threatens a woman's life or her health.

¹⁶⁵ The former Cabinet Minister and presently Member of Parliament and Presidential candidate for 2013 general election posted these comments on her facebook page. Available at <http://www.facebook.com/notes/martha-karua/more-thoughts-on-the-draft-constitution/10150172848000364>.

¹⁶⁶ The Bill is available online at <http://www.strathmore.edu/pdf/reproductive-health-bill.pdf>

I can say with certainty that no Reproductive Health Bill has so far been tabled in Parliament and whether such a Bill if tabled would include legalizing abortion is speculative and should not be used to scare people away from the draft. We cannot legislate to stop people from making whatever proposals they wish in the future but society must remain vigilant to ensure that only those proposals that meet its moral standards are accepted.¹⁶⁷

The MP's comment in this case exhibits two important factors. Firstly, she is incorrect in claiming that no bill had been tabled in Parliament because, although it was not discussed, a Bill was tabled in 2008. Secondly, the said draft Bill did actually provide for legal abortion in extended cases, including for economic factors. Seemingly, when she was addressing a workshop which was clearly pro-abortion, this MP clearly indicated her support for abortion. However, when addressing the general public on the same issue, especially as a Presidential candidate, her stance focuses more on the more acceptable health discourse.

In chapter 5, I noted another Kenyan female leader, Charity Ngilu, who has on various occasions expressed different opinions on abortion depending on occasion and audience. It is therefore plausible to argue that a pro-abortion rights discourse in Kenya exhibits two distinct characteristics. The rights discourse is prevalent when the target audience or readership is presumably pro-abortion, and absent in public debate. The need to front two distinct arguments targeting different audiences may be twofold. First, it may be donor driven, as most pro-abortion women's and human rights organisations, including FIDA Kenya, are funded by international foreign organisations. I contend that because international organisations working on abortion in Kenya (most of which happen to be American) tend to prioritize the rights discourse, the presence of this discourse in workshops, conference papers and other publications may be either because the organisations produce the documents themselves,¹⁶⁸ or direct the content of the publications as funding agencies. Secondly, because the public debate on abortion takes place in a mainly patriarchal, neo-patrimonial environment (see Chapter 5)

¹⁶⁷ Posted on her facebook page <http://www.facebook.com/note.php?note-id=10150172848000364>

¹⁶⁸ For example, the Guttmacher Institute and the Center for Reproductive Rights, both USA based, have published detailed materials on abortion in Kenya.

in which women's rights are rarely recognised, pro-abortion actors are inclined to reframe their discourse in a way that recognises the prevailing socio-political constraints. In order to survive politically, the two women politicians referred to earlier must adopt positions that do not antagonise their constituents, most of whom are religious and *publicly* anti-abortion.

It is important to note that male politicians in Kenya are also often faced with the need to articulate differentiated opinions. For example, during a mock tribunal organised by the Kenya Human Rights Commission (KHRC) and the Reproductive Health and Rights Alliance (RHRA) in 2007, Dr Enoch Kibunguchy, a Member of Parliament and Assistant Minister for Health, called for the legalisation of abortion, accusing religious leaders opposed to decriminalisation of dishonesty (Njeri, 2007; Onyango & Mugo, 2008). He is noted to have said, "It is true I have helped nuns and priests' mistresses procure abortions, and most of my fellow gynaecologists in town [Nairobi] would say the same if they were honest" (allAfrica.com, 2007). However, following a press conference in which the Executive Secretary of the Catholic Health Commission condemned the Member of Parliament's claims and dared him to "stand firm and repeat his statement to his constituents so that they may judge him and his actions at the next general elections", the MP retracted his story, saying he had only helped one former nun to terminate an incomplete abortion while working in a government hospital (ibid.). It is obvious that for this Member of Parliament, as for the two female politicians referred to earlier, their personal principles are overruled by political realities.

Although the need to win public support may help explain women's and human rights organisations' avoidance of expressing explicit pro-abortion rights discourse in public, the majority of pro-abortion research participants were themselves of the opinion that the organisations had actually not done much towards abortion law liberalization in general. The participants' claims were supported by my own observations that mainstream women's organisations avoid tackling the issue, choosing instead to focus on less controversial issues such as poverty, violence against women, female circumcision and HIV/AIDS. For example, after making numerous attempts to have an interview with any senior official from the *Maendeleo ya Wanawake Organisation* (MYWO), I was

eventually told none wished to be interviewed because they were uncomfortable with the area of my research. Evidently, although unsafe abortion kills and maims thousands of women every year, the largest women's organisation in the country chooses to ignore it. Unsurprisingly, the organisation is not a member of the Reproductive Health and Rights Alliance, the central body working towards abortion law liberalization. I had a similar experience at another local and relatively large organisation, the National Council of Women of Kenya (NCWK),¹⁶⁹ which is also not listed as a member of the Reproductive Health and Rights Alliance.¹⁷⁰

The evident lack of commitment to the abortion issue by the larger women's organisations was blamed on their leaders' unwillingness, rather than their inability, to bring to the fore Kenyan women's reproductive rights. Instead, as shown in Chapter 5, the leaders were said to have been swayed by neo-patrimonial and tribal politics, all of which have hindered the formation of a strong women's movement. Additionally, many leaders of women's organisations seem to have joined these organisations because of the publicity that the leaders may get, rather than because of their commitment to feminist ideals. This is evidenced by the fact that most female parliamentarians in Kenya, as well as those holding senior government positions, previously worked with non-governmental organisations, and particularly women-related ones, before joining politics (Mburia et al., 2011). It is possible that the leaders use the organisations as a means of testing their popularity as well as a good networking opportunity from where they are able to meet tribal leaders who hold sway in elections. Such leaders are therefore unlikely to pursue issues that could make them appear like radical feminists, which could jeopardise their being appointed to plum state jobs or election as Members of Parliament.

¹⁶⁹ The National Council for Women in Kenya (NCWK) was established in 1964 and its main purpose was to strengthen and unite women's organizations at the local, national and international levels. The organisation's website (<http://ncwk.or.ke/html/profile.html>) claims it has over 150 women organizations affiliated to it.

¹⁷⁰ The fact that these two local and more representative organizations have not joined the campaign towards abortion decriminalisation may be used to justify claims that the push for abortion legalisation is *foreign*.

As the above discussion suggests, although a rights based discourse is explicit when the target audience and/or readership is presumed to be pro-abortion, it is largely absent when the audience is assumed to be anti-abortion or mixed. While this may be a reflection of donor preferences, it is also a result of the nature of politics in Kenya wherein political leaders avoid dealing with controversial issues for fear of losing potential votes. Moreover, as demonstrated in Chapter 5, the government has in the past co-opted women's organisation which has had the effect of making them apolitical. Such organisations are unlikely to pursue women's abortion rights. Additionally, because most leaders of women's organisations often harbour political ambitions, they are often reluctant to pursue controversial issues that could make them less attractive to tribal and ethnic leaders who hold sway in political elections as well as to the general electorate. As such, the women leaders ignore the issue of unsafe abortion, while choosing to concentrate on the more acceptable health and economics discourse of abortion. However, as I will show in the next section, prioritising these discourses has implications that are not necessarily beneficial to women.

7.4. Implications of Public Health and Economic Pro-abortion Discourses

As noted above, the public health pro-abortion recommendation to legalize abortion is premised on the belief that all women should be able to obtain safe and affordable abortions if and when they desire them. To these actors, access to safe abortion services is a crucial part of ensuring high quality healthcare for women. They argue that despite its illegality, thousands of Kenyan women have abortions performed by unskilled persons in unsafe conditions, and many die or suffer health complications as a result. This not only negatively affects attempts to reduce maternal mortality and morbidity, but also results in funds being spent on a problem that could have been prevented. For the pro-abortion activists, making abortion legal is a prerequisite for making it safe. However, the privileging of public health discourse, which also places control abortion within the medical health fraternity, can be said to have had varied consequences, both positive and negative.

Identifying abortion as a public health issue allows for a transition away from the traditional focus on individual women's behaviour¹⁷¹ toward attention to the environments in which unwanted pregnancies happen. As such, in their support for policy changes towards abortion decriminalization, pro-abortion actors in Kenya point to the fact that it is not possible to understand abortion, or the factors that influence women's abortion decisions, without an awareness of the conditions of the women's lived realities. They thus acknowledge the need to address the material conditions, such as patriarchy, poverty, sexual abuse, and lack of sex education, that expose women to unwanted pregnancies. Arguing that poor and younger women are not only more likely to have unwanted pregnancies but also to turn to unsafe abortion providers, pro-abortion actors posit that dealing with unsafe abortion would, as recommended by radical and socialist feminists, need to go hand in hand with addressing the factors that lead to unwanted pregnancies. To this end, pro-abortion actors insist that women of all ages be granted more access to and knowledge about contraceptives and birth control.

However, although framing abortion as a public health issue and the consequent resonance with mainstream ideals such as the attainment of Millennium Development Goals or Vision 2030 may have enabled pro-abortion actors to widen their support base by winning a significant proportion of popular support and elite allies, it also has the potential to deliver two contradictory consequences: depoliticization of the issue and the marginalization of the discourse of women's right to abortion.

Depoliticization involves the suppression and replacement of the political element of social phenomena with a seemingly apolitical and technical perspective in policy and decision-making (Haines, 1979; Krippner, 2011; Lovenduski & Outshoorn, 1986). As a tactic, depoliticization works through the adoption of rule-based systems that are theoretically insulated from political pressures or that significantly diminish the discretion of politicians (Buller & Flinders, 2005; Burnham, 2000; Flinders & Buller, 2006). In relation to abortion, depoliticization usually involves abortion being defined as a technical issue, for which medical

¹⁷¹ In Chapter 5, I demonstrated that moralized anti-abortion discourses in Kenya construct abortion and unwanted pregnancies as individual women's problems, the remedy for which is to be found in avoiding immoral sexual encounters.

experts ought to take responsibility (Lovenduski & Outshoorn, 1986). When abortion is seen in this way, to argue against abortion is to argue against a doctor's decision about what is best for a patient. In Kenya, the fact that mainstream pro-abortion discourses mainly focus on the public health and to some extent the economic implications of unsafe abortion clearly points toward depoliticization. By concentrating on the tragic outcomes and costs of unsafe illegal abortions, these discourses explicitly suggest that the only way in which the social and economic consequences of unsafe abortion can be avoided is by allowing health professionals to provide safe abortions. Moreover, by emphasizing the benefits that would accrue if abortions were offered safely by skilled individuals, depoliticization provides pro-abortion actors with an opportunity to position themselves as *life saving* champions, while associating the efforts of anti-abortion groups with danger and death. By evoking images of butchered women left bleeding to death as a result of botched abortions, depoliticization not only discredits the anti-abortion construction of women seeking abortion as immoral, but also helps in concretising the medicalization of abortion.

The influence of depoliticization is evident in Kenya's new 2010 Constitution, in which health professionals were accorded the right to determine the circumstances in which an abortion could be legally provided. When making submissions to the Committee of Experts which was writing the draft Constitution, medical health professionals argued that "the right to reproductive health should be entrenched in the Constitution. The only way we can reduce maternal fatalities in the country is by making abortion rare, safe and legal" (Mathenge, 2009b). Although this goes against feminist recommendations by giving doctors power over women's reproductive choices, presenting abortion as a medical condition helped galvanise support for the Constitution's adoption during the 2010 referendum. In fact, during debate on the draft Constitution in Parliament, members argued that backstreet abortions were costly to the nation and hence the proposal to give medical health professionals the right to decide on when to provide legal abortion was in order (Ndegwa, 2010). Consequently, it can be argued that medicalization of abortion may be a strategy borne of the realization that arguments grounded in the language of reproductive rights and privacy, which are common in the United States of America but absent from the Kenyan scene, could have generated negative feelings in the largely Christian and patriarchal community.

Furthermore, medicalization of abortion has an additional advantage. By presenting abortion as a public health issue, pro-abortion actors have been afforded an opportunity to characterise demands for safe abortion as demands for an essential health care service. This, coupled with the construction of victims of unsafe abortion as poor and generally marginalised women, also helps address the issue of access rather than just the legality of abortion. Silliman et al. (2004) explain how in the United States of America, failure to make abortion funding and access more prominent in the pro-choice campaign accentuated race and class divisions. Because the mainstream movement was primarily concerned with the legal right to abortion, abortion remains inaccessible for many women, but more so for poor and marginalised women in the USA. Furthermore, as shown by countries such as Zambia and Ghana, legalisation of abortion is a necessary but insufficient step toward improving women's reproductive health. In these countries, although abortion is legal, access to competent care remains restricted because of other barriers such as funding service provision and perceived poor quality of care (Castle et al., 1990). As such, the classification of abortion as a medical care service, alongside others, in Kenyan pro-abortion discourses, compels medical health providers, including those who might be anti-abortion, to provide the procedure for women in need.¹⁷² This is especially crucial because, as shown in Chapter 6, religious organisations not only provide almost a third of health care services in Kenya, but in some areas, they are the only providers. In such areas, religiously run health institutions' refusal to provide safe abortions would leave women susceptible to unsafe but legal abortions if they have to turn to unqualified providers. The realisation that law, while necessary, may not by itself guarantee access to safe abortion confirms a common criticism of liberal feminists who concentrate on laws but fail to problematise the overall structure of the society (see Chapter 2).

At another level though, while depoliticization has allowed Kenyan pro-abortion activists to counter anti-abortion discourses that present foetuses as the only losers in abortion cases, the pro-abortion discourses nevertheless shift attention away

¹⁷² It is notable that there exist conscience clauses, which allow healthcare providers to refuse to provide abortion if it goes against their personal moral or religious convictions (Guttmacher, et al., 1998). Conscience clauses however normally do not apply in emergency situations, such as when the woman's life or permanent health is at risk.

from women with unwanted pregnancies to the consequences that their abortions could have on other sectors of society, rather than on themselves. By extolling the public health and economic costs of unsafe abortion, the discourses depoliticize the issue by obscuring political aspects of abortion such as patriarchy and power dynamics in a male-dominated society, and how these contribute to unwanted pregnancies. As already demonstrated in this chapter, economic forces and social structures, such as poverty, contraceptive unavailability and sexual violence, play an important role in influencing women's reproductive choices. Thus, while providing abortion for health reasons grants some women access to safe legal abortions, it does not extend the same to the majority of Kenyan women seeking abortion for economic and social reasons, to single mothers and young women in difficult circumstances, or to victims of contraceptive failure. These women are likely to continue seeking unsafe abortions from untrained individuals. Moreover, considering that many unsafe abortions in Kenya are procured by poor married women and younger women, depoliticizing abortion ignores *political* issues of spousal rape (which the Kenyan Parliament has failed to legislate against).

Additionally, feminist researchers have contested the medicalization and the consequent depoliticization of abortion with arguments that women's struggle for better reproductive and sexual health is a political struggle for control over their bodies, and not merely a demand for the expansion of medical health services (Sheldon, 1997). These feminists have questioned the rationale behind placing control over termination within the medical domain by requiring the permission of a doctor and/or doctors. They have argued that this practice presents the doctor as best situated, based on medical expertise and presumably inherent wisdom, to assess women's needs and best interests (Sheldon, 1997). This in turn represents women as inadequate, unstable, or unwise decision-makers, as observed by a pro-abortion research participant:

The abortion law for example, is a barrier to women making their own decision on reproduction. Even if a woman is in danger of dying because of a pregnancy, it is the doctor to make the decision to terminate it. That is what the law requires. Even in a case where the woman makes the decision, the doctor can refuse. So the woman is totally out of the picture in the decision making process although she is the one carrying the pregnancy. Women are human beings. So why can't they be trusted to

make the right decision? That is an abnormality we have to correct.
(NSA1)

To feminist researchers as well as to this participant, the ascription of decision making authority to doctors not only reinforces stereotypes of women as people who lack reason, maturity, sanity, and the ability to assess their own interests, but also complicates and pathologizes a relatively simple procedure (Leslie, 2010). Moreover, placing abortion in the medical field fails to acknowledge the fact that most women, at least in Kenya, have abortions for socio-economic rather than medical reasons. As such, I argue that legalising abortion on health grounds, as the new Kenyan Constitution has done, leaves a majority of Kenyan women exposed to the dangers of illegal unsafe abortions.

7.5. Conclusion

In this chapter, I have analysed pro-abortion discourses in Kenya. I have shown that unlike women's movement-led abortion law reform campaigns in developed countries, the pro-abortion campaign in Kenya is spearheaded by medical health professionals and therefore tends to mainly concentrate on health complications resulting from unsafe abortion. To a lesser extent though, the pro-abortion actors also pay attention to the economic costs of unsafe abortion to the country as a whole as well as to individual women. I have shown that the institutionalization of anti-abortion discourses and the strategic ambivalence of Kenyan political leaders as a result of neo-patrimonial politics have influenced this framing of pro-abortion discourses. This framing has had the effect of sidelining a discourse asserting a woman's right to terminate a pregnancy. Although it is plausible to assume that the Kenyan pro-abortion actors could have considered public health arguments to be more forceful in a generally overtly religious and patriarchal society, other factors may also be at play. Firstly, a health and economic discourse resonates well with the political elite who tend to avoid controversial issues. Secondly, a health and economic discourse also resonates with the wider government developmental goals and more specifically the Millennium Development Goals and Kenya's Vision 2030. On the negative side, I have shown that the pro-abortion actors' failure to construe abortion as choice, coupled with the fact that it is often left for doctors to determine when a woman can lawfully have an abortion, implicitly perpetuates the perception that abortion is an abnormal act for

which permission must be granted by a higher authority to those women who are *unlucky* or *foolish* enough to need it. But, research in Kenya has showed that Kenyan women do actually make conscious decisions to have abortions (Izugbara et al., 2009).

It is also worth noting that in their attempt to challenge anti-abortion discourses that present abortion as harmful to women's health, pro-abortion actors have not utilised research already conducted in America and Europe that has proven the safety of abortion. In fact, the pro-abortion actors have not even dwelt on the fact that the abortion law is a colonial legacy and that prior to colonialism and the introduction of both Islam and Christianity into Kenya, abortion was an acceptable way of dealing with certain kinds of unwanted pregnancies. This, I suggest, would provide a powerful counter-claim to anti-abortion discourse that presents abortion as unAfrican. In fact, some African scholars have intimated that discourses that present abortion as dangerous for women are relatively new. Hunt (2007, p. 17), has, for example, noted that in Africa, abortion has always been "a banality in many African women's lives, easily obtained, often safely performed, and enabling them less to limit total numbers of births than to control their timing in relation to marriage, initiation, other births, schooling, vocational matters, and the opinions of others." In her opinion, medicalization of abortion following European occupation is what exposes women and girls to greater risk from botched abortions. Researchers in Kenya (Lema & Njau, 1990) have shown that in traditional societies, there always were known providers of abortion services who relied on traditional methods such as herbs and massage.

I have also shown that the absence of a women's rights approach to abortion is also related to the neo-patrimonial nature of Kenyan politics. In addition to politicians avoiding the issue because of the fallout that could result from either opposing or supporting abortion, neo-patrimonialism has weakened the women's movement and therefore the ability of women's organisations to comprehensively campaign for women's rights. Moreover, because leaders of women's organisations often have political aspirations, they also tend to avoid dealing with controversial issues. By demonstrating the significance of neo-patrimonial politics in the construction of pro-abortion discourses in Kenya, I have shown the

inadequacy of relying solely on Western-oriented feminist theories of the state, as shown by the Critical African Feminist Perspective (see figure 1).

Chapter Eight

Concluding Remarks

8.0. Introduction

Kenya adopted a new Constitution in August 2010 that has made sweeping changes to the structure, institutions, and norms that frame the Kenyan state. Amongst the most significant constitutional changes of relevance to the sexual politics discussed in this study include reducing the power of the executive and strengthening the Parliamentary and judicial arms of government. As I have shown in this study, power concentration in the executive has been instrumental in enabling the ruling elite to influence public policy. The new Constitution also significantly expands the circumstances in which legal abortion can be offered and entrenches the principle of affirmative action. In sum, the new Constitution provides for equality of rights and freedoms, including equal political, economic, cultural and social opportunities, and outlaws discrimination on any grounds.

At face value, it appears that a number of issues highlighted in this thesis are directly being addressed by the new Constitution. Are we, then, looking at the beginning of a new dawn in Kenya where women and medical practitioners will no longer be criminalised for seeking or providing access to abortion? In this concluding chapter, I argue that although the new Constitution instils the principle of gender equality in governance structures in Kenya and allows for legal abortion, neo-patrimonialism remains deeply embedded in the fabric of Kenyan politics.

I begin by reflecting on the major findings of the thesis and their significance, before turning to a discussion of the key relevant features of the new Constitution and their likelihood of transforming the regulation and discourses of sexual politics in Kenya. I end with some thoughts on future research directions.

8.1. Major Findings of the Study

The fundamental goal of this study was to undertake a feminist analysis of the Kenyan state to explore how the state, through its policy regime, shapes sexual

politics in general and the politics of abortion in particular. A review of existing mainstream western feminist theorisations of the state revealed that, although useful, they do not fully account for African states in general, and in particular, the Kenyan state's treatment of the issue of abortion. Specifically, these theories lack a gendered consciousness of African histories, and more so of the gendered effects of colonialism and the realities of the resultant neo-patrimonial nature of post-colonial states. Consequently, I developed the Critical African Feminist Perspective on the state, which draws on some relevant aspects of liberal, radical, socialist and post-structuralist feminist theorizations, but adds an analysis of the African state's neo-patrimonial structure. The perspective, which functioned as my analytical framework in this study, highlights the need to consider neo-patrimonialism, coupled with related practices such as corruption, clientelism, the politics of exclusion and marginalization, and governmental manipulation, co-optation and subversion, in the formulation of a theory that could be used in interpreting the Kenyan state's regulation of sexual politics.

The Critical African Feminist Perspective, in addition to focusing on neo-patrimonialism, also recognises the importance of legal reforms to ensure access to legal abortion as envisaged by liberal feminists. This study therefore supports legal reforms decriminalising abortion in Kenya, as well as mechanisms to increase women's capacity to engage effectively with the social, economic and political processes in the society. Additionally, the radical feminist concept of patriarchy as embodied in male domination of political leadership and all institutions, as well as the socialist feminist focus on *capitalist patriarchy* and on gender relations in both domestic and public life, informed the perspective. The role of discourse in shaping the public sphere of politics was highlighted through the use of post-structuralist feminist conceptualisations and how these discourses construct Kenyan women's bodies and abortion. Also from post-structuralism was drawn the idea of the non-unitary fragmented and the contradictory state as a means to explain the strategic ambivalence of the Kenyan state's response as well as the executive-judiciary dynamics in response to the influential public discourses.

I contend that the Critical African Feminist Perspective has been useful in explaining why the issue of abortion remains largely unaddressed by the Kenyan

state. Using the perspective, I have been able to demonstrate that as a result of neo-patrimonial politics, the mainly male political elite have been unwilling to support legalization of abortion for fear of losing support from men in general and more specifically from traditional and religious groups. Neo-patrimonial politics, and its attendant norms such as patronage, clientelism and corruption, all of which continue to shape policies concerning women's sexuality and access to safe abortion, was introduced by the British in large part through a system of indirect rule (see Chapter 4). The transfer of authority to local male leaders, appointed by the colonial masters (Englebert, 1997; Njoku, 2005), had two major effects relevant to this study. Firstly, because these local leaders were foisted upon communities, the leaders felt no responsibility to the communities. This engendered a system in which access to government came to be seen as an opportunity for advancing self-interest rather than the interests of the community (see also Njoku, 2005). Secondly, indirect rule also facilitated colonization of the domestic realm, enabling local leaders to manipulate meaning and redefine relationships, particularly with regard to women's roles, women's sexuality, marriage, divorce, adultery, and childbirth (Amadiume, 1987; Geiger, 1996; Van Allen, 1976). Under the guidance of the colonial state, local leaders engineered the establishment and institutionalization of the gender discriminative customary laws, which legitimised not just the exclusion of African women from political life, but also their subordination in the private sphere. Thus began the process wherein gender reforms were (and continue to be) motivated by a desire to strengthen elite, patriarchal political power. In this thesis I looked at historical case of the female circumcision controversy as an exemplar of the manner in which these multiple, contradictory forces come to bear on sexual politics. This controversy demonstrated how women's and gender rights issues were used as bargaining chips in negotiations between contending male groups. It also illustrated how women's issues are often trumped by patriarchal, nationalist and/or capitalist concerns, which as claimed by liberal, radical, and socialist feminists, often leads to women's subordination in all spheres of life.

Such systematic and institutional subordination of women continued even with the transition from a colonial state to a post-colonial one. Inheriting a predatory bureaucratic authoritarian state from the British colonialists, post-colonial Kenyan leaders amended the Constitution of independent Kenya to install a dictatorial

order that centralised power in the executive, leading to the entrenchment of neo-patrimonial politics (see Chapter 5). During this phase, the ruling elites used the state for personal enrichment and profit from a public administration that was patently unstable, inefficient, and distributed public resources through patron-client relationships to *important* power bases that in turn provide political support and legitimacy (Crook, 2003; Dorman, 2006; Kebonang, 2005). The resultant systemic clientelism has had a profound effect on the design of public policy since policy reforms are conditioned by the need to acquire and/or appease clients, rather than serve the interests of the citizenry. Furthermore, the diversion of public resources to service particularistic patronage networks exacerbates corruption, leading to increased poverty for those outside of state patronage, particularly women. In such an environment, the Kenyan ruling elite have been unwilling to conclusively deal with the issue of unsafe abortion in order to forestall the political fallout that could result from either decriminalisation or enforcing the abortion law. As such, although the political elite in Kenya may not necessarily be opposed to abortion legalization, the attempt to address the competing interests of different groups has made the Kenyan state adopt a tactic of *strategic ambivalence* on the issue, wherein the colonial law criminalising abortion has been sustained, but not enforced.

Key among the politically influential anti-abortion actors are religious organisations, primarily mainstream Christian churches, whose moralised, foetal life-focused anti-abortion discourses have been successfully legitimised and institutionalised (see Chapter 6). As a result of historical processes such as colonialism, such religious groups have accumulated power, influence and social status that have increased their ability to significantly influence Kenyan politics. In the context of neo-patrimonial and clientelist politics, the ruling elite have taken into account the values and priorities of religious groups when formulating public policies, especially with regard to issues pertaining directly to women's status, including family values, abortion, and control of sexuality. The resultant mutual networks of reciprocity have hindered women's ability to access legal abortions, as the Kenyan state has consistently failed to decriminalise abortion for fear of sacrificing support from a large Christian constituency.

The influence of religious leaders, however, seems to have been shaken following the adoption of a new Constitution to which the clergy, and particularly Christian religious leaders, were opposed. Although it is possible to argue that the passing of the Constitution is reflective of the declining significance of religious leaders to politicians, I would argue instead that the political elite chose to temporarily ignore religious leaders' protests as they were under intense pressure to deliver a new Constitution following the 2008 post-election violence. Additionally, and more importantly, the mass violence and widespread destruction of property following the disputed elections presented a collective threat to both the political and economic interests of the elite, who understood that their political careers and wealth were better protected by constitutional reforms. My argument is strengthened by the fact that during campaigns in support of the draft Constitution, senior politicians publicly aired their opposition to abortion and promised religious leaders that they would amend the law later (Mutiga, 2010). Furthermore, as is presently evident, leaders campaigning for the March 2013 general election constantly use church premises as political campaign platforms (Orengo & Kibet, 2012). Therefore, as is consistent with neo-patrimonial states where public policy reforms are guided by the needs of the ruling elite, Kenya's new Constitution can be seen as a form of political concession by the ruling elite in response to pressure from citizens and donors.¹⁷³

Such concessions have been rare in Kenya, and pro-abortion actors have adopted a range of arguments, philosophical principles, narratives and other important rhetorical strategies to counter the institutionalised, foetal-focused and moralising anti-abortion discourses (see Chapter 7). In response to the *strategic ambivalence* espoused by Kenyan political leaders, Kenya's pro-abortion actors frame their messages in ways that appeal to the public at large. As such, rather than focusing on abortion as a woman's right, pro-abortion discourses in Kenya emphasize the health complications resulting from unsafe abortion, which resonates not just with the political elite who tend to avoid controversial issues, but also with the wider government's developmental goals.

¹⁷³ Although a majority of Kenyans are supportive of the Church and its moralistic position on abortion, they were disillusioned by the post-election violence and considered a new Constitution necessary for the future of the country.

In view of these findings, I examine the significance of this study in the following section. I focus on the contributions that this study makes both to feminist scholarship on the state in general, and to scholarship on the gender politics of the Kenyan state in particular. I also reflect on the Critical African Feminist Perspective, and specifically address the controversy surrounding the concept of neo-patrimonialism.

8.2 Significance of the Research

In Chapter 2, I argued that despite the contemporary dominance of Western feminist theorizations of the state, they fail to account for some of the complex realities of African states, and particularly the neo-patrimonial nature of post-colonial states, and the effect this has on women. As such, a perspective that acknowledges the relevance of existing feminist theories but accommodates the specific ways in which the nature of post-colonial African states affect the lived realities of women in general, and their experiences of abortion in particular, largely enriches feminist understandings of the state. In other words, incorporating the concept of neo-patrimonialism into feminist analysis of the Third World African state greatly enhances the relevance and applicability of feminist theories by providing an added insight into how state power is exercised and experienced.

At the regional level, this study tackles an issue of importance to African feminists' theorising on the state. It is notable that feminist studies on gender in Africa have tended to concentrate on how male domination and poverty cause the oppression and marginalization of women. However, these studies have given insufficient attention to how state *ideologies, practices and structures* contribute both to male dominance and women's marginalisation. Yet, as demonstrated in this research, understanding how neo-patrimonial governance works is central to understanding why states in Africa have consistently found it difficult to institute and enforce mechanisms for gender equality in both private and public spheres of life. For example, in the same way that the Kenyan state has failed to decriminalise abortion to appease contending interest groups, almost all states in Sub-Saharan Africa have consistently failed to legislate against marital rape, domestic violence, and female circumcision (Fallon, 2008; Kilonzo et al., 2009; Kimani, 2007). Additionally, African states have also failed to pass laws ensuring

women's rights to inherit land, in order to appease men (Fallon, 2008; Harrington & Chopra, 2010). Although the patriarchal and *masculinist* structure of African states may be understood as being behind these states' actions, it should not be lost that the states, as noted by Connell (1994), do not do so *just to discriminate* against women. Rather, because patrons occupy bureaucratic positions in order to enhance their own personal wealth and to secure benefits for their clients, the interests of those outside of state patronage, particularly women, often get ignored (see Chapter 5). As such, the Critical African Feminist Perspective offers a new empirically grounded theoretical lens to understand contemporary African states and politics, as it explains why purely technical prescriptions for good governance and structural adjustment programmes, for example, have failed to address Africa's problems.

The above discussion shows that the Critical African Feminist Perspective is a robust analytical tool that is useful in explaining not only why the issue of abortion remains largely unaddressed by the Kenyan state, but also has the potential to be applied to the analysis of other gender and policy issues. However, in making a case for the need to incorporate neo-patrimonialism into feminist analyses of the African state, I am aware of the controversy surrounding the use of the concept, as well as its limitations (deGrassi, 2008). Firstly, the analysis in this study presents neo-patrimonialism only in negative terms. However, some researchers have claimed that neo-patrimonialism is not always as damaging as has often been thought (Kelsall, 2011). Such researchers have argued that there is evidence of neo-patrimonial regimes presiding over rapid and poverty-reducing economic growth in countries such as Taiwan, China, Singapore, Korea, Indonesia and Malaysia (Amsden, 1989; Moore & Schmitz, 2008). However, as this study has shown, neo-patrimonial politics has clearly had a negative effect on Kenya's general population, and on women and issues concerning them, specifically.

Secondly, scholars in developing countries have protested the wholesale pessimistic presentation of states in Africa as characterized by neo-patrimonialism, wherein the state is seen merely as "an instrument for depraved elites" (Bauer & Taylor, 2005, p. 1). They argue that this view obscures important regional and sub-regional distinctions and confirms Western preconceptions and

misconceptions about the African continent (Mkandawire, 2001). Incidentally, many, though certainly not all, of the key proponents of the neo-patrimonial theory have been white men (deGrassi, 2008). Furthermore, the characterization of neo-patrimonialism as inherently African has been negated by scholars who have claimed that the personalized systems in Africa have been sustained by European and American donors, who have collaborated in enforcing policy conditionality, such as structural adjustment programmes, that have resulted in the concentration of decision-making power and financial control within the political elite (Berman, 1974; deGrassi, 2008; Hull, 1979; Sidaway, 2003; Szeftel, 2000). Although this discussion does not exhaustively deal with the controversy surrounding neo-patrimonialism as an analytical concept, I argue that it is important that the various ways in which neo-patrimonialism affects marginalised groups, such as women and youth be investigated. As shown in this study, used alongside other feminist theories of the state, neo-patrimonialism helps explain why the Kenyan state has failed to conclusively address the issue of unsafe abortion.

This study, ultimately, points out that the sexual politics of the contemporary Kenyan state is influenced by the following facets:

- History: Colonialism has influenced sexual politics both directly through its Christian morality that is seen in contemporary anti-abortion discourses, and indirectly through the peculiar governance structures that emerged in the wake of indirect rule.
- Institutionalised power relations: The state's sexual politics are skewed by other institutions, such as the church, that have sway over political decision-making and dominant social values.
- Male-dominated state structures: Male domination refers not only to the predominantly male representation within the executive and the judiciary, but also to male ethos at all levels of the state's institutions. The masculinity of the state is also manifest in the persona of the head of the state that symbolises the interests of patriarchy. All of this has implications for sexual and gender politics.
- Economic contexts: Finally, this research has shown that economic contexts also play a role in the sexual politics of the state. These include

colonial economic agendas, the economics of clientelism, as well as the wider development context which favours certain areas (eg, HIV/AIDS) as relevant to socio-economic wellbeing compared to others (such as unsafe abortion and its impact).

Fundamentally, this thesis has shown the linkages between values (discourse) and structures. This is a dynamic link, not one based on a cause-effect relationship. While values and structures feed off each other, they are also independently influenced by a host of factors.

Before proposing possible areas for future research, I wish to briefly discuss the significance of the new Constitution, which was adopted halfway through my research. This is mainly because the Constitution addresses some of the key issues identified in the findings of this study. I concentrate on how, and the extent to which, the issues of neo-patrimonialism, gender equality, and abortion have been addressed by the recent constitutional reforms.

8.3. Key Features of the New Constitution

8.3.1. Neo-patrimonial Politics and Kenya's New Constitution

Neo-patrimonialism, as shown in this study, relates to the centralization of power within the executive arm of government, and the resultant use of this power to acquire and reward supporters (Boas, 2001). As noted in Chapter 5, a series of Constitutional amendments to the 1963 Independence Constitution saw the Presidency ascend in power relative to Parliament, the cabinet, the judiciary, the civil service, and the local government among others (Omollo, 2002).¹⁷⁴ The fact that all senior civil servants served at the pleasure of the President meant that, to hold onto their jobs, government officials made decisions and/or policies that favoured their appointing authority. This obviously reduced Parliament, the judiciary and the civil service to near, if not complete, rubber stamps (Amutabi,

¹⁷⁴ Some scholars have however argued that the concentration of power in the executive was predicated on the colonial legacy as it wholly inherited the laws, culture, and practices of the colonial state (Murunga & Nasong'o, 2006; Mutua, 2001).

2010), thereby diminishing their desire and ability to act in the interest of the public good.

It is therefore not surprising that a primary goal of the new Constitution was to drastically reduce the powers of the executive and to strengthen the Parliamentary and judicial arms of government. To this end, Articles 95, 152, 166, 228 and 229 of the new Constitution require that all major Presidential appointments – including members of the Cabinet, the judiciary, senior bureaucrats, and ambassadors – are approved by Parliament or are subjected to recommendations from various independent commissions. Furthermore, in addition to abolishing the practice of appointing Cabinet ministers from among Members of Parliament,¹⁷⁵ the new Constitution limits the number of ministers, now renamed as Cabinet Secretaries, to between fourteen and twenty-two (Article 152(1) (d)).¹⁷⁶ The abolition of the position of Assistant Ministers further diminishes executive control over the National Assembly by reducing the number of parliamentarians serving in government. Additionally, a Kenyan President is deprived of the power to decide when elections should be held, and/ or when to dissolve Parliament. A President can therefore neither threaten nor coerce Members of Parliament using this power.

Assessing the above noted provisions in the new Constitution, it is plausible to conclude that the Kenyan legislature would henceforth function independently of the executive. In fact, in the period following the promulgation of the new Constitution in August 2010, the Kenyan Parliament has demonstrated a willingness and ability to put into practice its newly acquired independence to limit the excesses of the executive. For example, on 31 July 2012, Members of Parliament rejected President Mwai Kibaki's nominees to the National Police Service Commission (Shiundu, 2012). However, I contend that although a

¹⁷⁵ Section 152(3) of the new Constitution clearly states that a Cabinet Secretary shall not be a Member of Parliament. In case a Member of Parliament is appointed to the position of cabinet secretary, he/she is required to resign and a by-election be held at the individual's constituency.

¹⁷⁶ Previously, the President has had the power to decide on whom, among elected or nominated Members of Parliament, to appoint to the Cabinet. In the current government, for example, almost half the Members of Parliament are part of the executive, either as ministers or assistant ministers. This obviously compromises Parliament's oversight role over the executive.

strengthened Parliament may in principle be effective at shaping legislation, representing citizens' views, and monitoring and challenging the executive, the Kenyan Parliament's ability to do so is constrained by two factors. First, Kenyan Parliamentarians have a history of being self-serving, and it is hard to see how changes to institutional rules alone can automatically instil in them a commitment to some higher notion of public good. Secondly, even if they appear to enjoy robust powers in the Constitution, the political realities of neo-patrimonialism are likely to continue to constrain their ability to exercise their duties.

I would argue that although the new Constitution has addressed the issue of power concentration in the executive, it has not conclusively dealt with other aspects of neo-patrimonialism, such as the use of public resources for personal gain (corruption) and systematic clientelism. For example, in the post-new Constitution era, Members of Parliament and Parliamentary Committees have been accused of deal-cutting prior to questions, motions and committee investigations, as well as receiving bribes to absolve individuals involved in corruption (Gekara, 2012; Shiundu, 2012).¹⁷⁷ For instance, the chairman of the Public Accounts Committee, whose report on a controversial money-printing contract was rejected by Parliament, accused Members of Parliament of having received bribes (Shiundu, 2012). It is notable that the report recommended the sacking of Cabinet Minister Amos Kimunya and Central Bank governor Njuguna Ndung'u, both of whom are close allies of President Kibaki and the ruling elite. Thus, despite having caused the loss of US\$21 million in public funds, the two senior government officers escaped censure (Shiundu, 2012).

Furthermore, in the process of implementing the provisions of the new Constitution, Members of Parliament have passed laws aimed at serving their personal interests, some of which are in direct contravention of the new Constitution. For example, during the passing of the Leadership and Integrity Bill, MPs tore out sections intended to ensure those elected to public office are people

¹⁷⁷ In 2010, two groups of MPs were alleged to have forged a deal between them to support a Cabinet Minister accused of corruption during the purchase of the Kenyan Embassy building in Tokyo, in return of support for another minister involved in a controversial appointment of the Managing Director of a public organization (Mutai, 2010). Both Cabinet Ministers were subsequently found innocent by relevant Parliamentary Committees (Ndonga, 2011).

of high morals (Opiyo, 2012). They voted against requirements on wealth declaration, vetting by state agencies, and publication of their pending criminal court cases (ibid.). Not surprisingly, many MPs have been involved in controversies involving corruption or crimes against humanity (Leftie, 2012). Thus in passing a heavily edited Bill, the parliamentarians were engaging in a self-serving mission, whereby the adopted Bill totally undermined the provisions of Chapter 6 of the new Constitution. I would argue that in watering down the draft Bill presented by the Commission for the Implementation of the Constitution, Members of Parliament were intent on extricating prominent politicians Uhuru Kenyatta and William Ruto from being barred from contesting the Presidency in the March 2013 general election while facing charges for crimes against humanity at the International Criminal Court.¹⁷⁸ These MPs may have been motivated by their need to receive patronage from the Presidential hopefuls, who not only control massive wealth, but are also their tribes' preferred candidates (Opiyo, 2012). As such, MPs intent on *easily* winning Parliamentary seats would prefer to receive the endorsement of the Presidential candidates, since this accords them the necessary political clout, while at the same time providing the money needed to mount campaigns (Arriola, 2009). It is likely that when, and if, such individuals become parliamentarians, they will serve the interests of the President who effectively engineered their election, rather than those of Kenyan society.

Unlike Parliament, however, Kenya's revamped judiciary has exhibited the ability to act independently of the executive and to dispense justice as stipulated in the Constitution. As already noted, before the enactment of the new Constitution, the Kenyan judiciary lacked independence and was generally subservient to the executive. To correct this, the new Constitution accords the judiciary both financial (Article 160) and operational independence. Under articles 166-168, the Constitution significantly reduces the powers of the President over the judiciary by establishing an independent system for the appointment and dismissal of

¹⁷⁸ The two are among four suspects whose charges were confirmed in January 2012 by pre-trial Judges at the International Criminal Court over deadly violence following the disputed 2007-2008 Presidential polls (Onyango, 2012).

judicial officers. Although the President retains the power to appoint the Chief Justice, Deputy Chief Justice and other judges, the appointments are required to be in accordance with the recommendations of the Judicial Service Commission.¹⁷⁹ Additionally, the Chief Justice and her/his deputy are to be vetted by Parliament. It is noteworthy that some of these provisions have already been effected in the appointment of the Chief Justice, the Deputy Chief Justice, and judges of the Supreme Court and the judges of the Court of Appeal.

I contend that in comparison to Parliament, an independent judiciary is likely to be of greater benefit to Kenyan women in general and the abortion debate in particular, as evidenced by recent judgements. For example, when President Kibaki on January 28, 2012 nominated four men into the positions of Chief Justice, Attorney General, Director of Public Prosecutions and Controller of Budget, the High Court ruled that the President had breached the Constitution by failing to appoint women (Kadida, 2012). While ruling on the case, filed by women's organisations, Justice Daniel Musinga said that "I am satisfied that the nominations were in breach of Article 27(3) of the Constitution that guarantees fundamental rights and freedom of women and men to equal treatment, including the right to equal opportunities in political, economic, cultural and social spheres" (Kadida, 2012, p. 1). Soon after the ruling, President Kibaki withdrew his controversial nominations to the four constitutional offices (Kariuki, 2011). Such positive implementation of Constitutional provisions holds the promise of a judiciary that will ensure the implementation of women-friendly laws.¹⁸⁰

It is therefore possible that the Kenyan judiciary, when called upon, will be instrumental in determining and providing guidelines on how the new abortion law, as stipulated in Article 26 (4), should be applied. For example, it will be

¹⁷⁹ An independent Judicial Commission has been created by removing the President's role in the selection of its members. According to articles 68 and 69 of the Constitution, of the twelve or so members of the Judicial Service Commission, only two members representing the public will be appointed by the President. Even then, the two members require the approval of the National Assembly.

¹⁸⁰ Civil society groups also successfully contested the President's appointment of 47 county commissioners, 10 females and 37 males. The organizations argued that the President's action was in violation of the Constitution since it did not meet the requirements of Article 27 which provides that no single gender should occupy more than two thirds of State appointments (Ogemba, 2012).

necessary to specify what is meant by abortion being allowed in emergency cases, who qualifies to be included in the identified category of “trained health professional,” and generally, to determine the circumstances in which, and conditions under which, the pregnancy of a woman may be terminated. Furthermore, because Article 2 (6) of the new Constitution also stipulates that any treaty or convention ratified by Kenya shall form part of the law,¹⁸¹ Kenyan courts will be instrumental in the implementation of international law at the domestic level. The judiciary will be required to determine and interpret the provisions and implications of various international treaties and conventions, especially in instances where domestic provisions are pitted against international provisions. This is more so because the new Constitution, under Article 20 (3), compels courts to adopt an interpretation (of the law) that most favours the enforcement of a fundamental right or freedom. For example, although Kenya ratified the African Charter on Human and Peoples’ Rights on the Rights of Women in Africa (the Maputo Protocol) on October 8, 2010, it entered a reservation on Article 14(2) (c), which obliges African states to take measures to ensure availability of abortion in situations of rape, incest and where the physical and mental health of the mother is at risk. Kenyan courts would thus be expected to adopt the provisions of the Maputo Protocol, since they most favour Kenyan women’s right to legal and safe abortion.

Additionally, the Bill of Rights in the new Constitution gives all persons the right to institute petitions in the High Court, and to have their rights recognized and enforced, either in their own individual capacity or on behalf of others. As such, any woman in Kenya is in a position to petition the High Court if she is denied legal abortion. This provision is enhanced by the fact that courts are mandated to listen to and to determine such petitions without due regard to technicalities of procedure and without any filing fees being charged. At face value, it seems that the new Constitution has addressed the issue of illegal abortion in Kenya.

¹⁸¹ As noted by pro-abortion actors who participated in this research, women’s rights advocates have consistently struggled with domestication of progressive treaties or convention that the Kenya government has ratified.

8.3.2. Gender Equality in the New Constitution

In the course of this thesis, I have noted that one of the most glaring ways in which patriarchy exhibits itself in Kenya is in women's marginalisation socially, politically, and economically. I have argued that this marginalisation is embodied in laws and policies that favour men at the expense of women. To ensure gender equality, the new Constitution fundamentally alters gender relations in all spheres of life. Of great importance to Kenyan women is Article 2(4), which stipulates that any law that is inconsistent with the Constitution is void to the extent of the inconsistency, and any act or omission in contravention of the Constitution is invalid. Among the laws to be considered invalid if they contravene the Constitution are customary laws, which, as I have demonstrated, are responsible for gender discrimination in regard to matters such as marriage, divorce, child custody, and succession in Kenya.¹⁸² The implementation of this provision would thereby eliminate the cultural and religious justifications for discrimination against women, including arguments such as "abortion is unAfrican".¹⁸³ Furthermore, the Constitution provides for equality in land ownership (Article 60 (1) (f)); marriage (Article 45 (3)); matrimonial property (Article 68 (c) (iii)); citizenship (Article 14 (1)); and employment (Article 232 (i)).

Additionally, and most importantly in relation to the issue of abortion, Article 53(1) (e) of the new Kenyan Constitution assures that parental responsibility shall be shared between parents regardless of marital status. As noted in this study, Kenyan women and girls have had to care for children born outside the institution of marriage without any support or contribution from the men involved. This has exposed women to unsafe abortions in cases where women feel economically incapable of caring for an unplanned child (see Chapter 7). The provisions of the new Constitution, when taken together, are likely to provide for equality of rights

¹⁸² A well-documented case is that of a widow, Wambui Otieno, who lost the battle to bury her late husband to his clan (Stamp, 1991).

¹⁸³ Chapter 2, Article 8 of the Constitution clearly states that there is no state religion and Article 32(4) says that a person should not be compelled to act, or engage in any act, that is contrary to the person's belief or religion.

and freedoms including equal political, economic, cultural and social opportunities, as they outlaw discrimination on any grounds.

At the political level, the new Constitution of Kenya makes major strides in institutionalising affirmative action by adopting gender quotas. To promote the involvement of women in national decision-making processes, Article 81(b) of the new Constitution provides that “the electoral system shall comply with the following principle: not more than two thirds of the members of elective public bodies shall be of the same gender.” To ensure compliance, Article 27(8) further demands that the state take legislative and other measures to implement the principle of Article 81(b). These provisions are particularly important because, as I have argued, women’s exclusion from policy-making state institutions has led not just to the adoption of policies that favour men at the expense of women, but also to the marginalisation of issues affecting women, including abortion.

The Constitution reserves 47 seats in the National Assembly for women, as Article 97(b) requires one woman to be elected from each county by the voters of the 47 counties. This is in addition to and does not bar women from vying for positions in the 290 constituencies and for the 12 political party nominations. In the Senate, stipulated to have about 67 members, Article 98 provides that 16 women members be nominated from political party lists. These members will be additional to any women elected directly from counties. Two more women will be nominated to represent youth and persons with disability. Obviously, the Constitution takes very clear measures to ensure women’s inclusion in the area of leadership and decision making. In fact, the constitutional provisions for same gender representation are so clear that it is virtually impossible to miscomprehend them in any way.

It is, however, important to note that as provided in the Constitution, the 47 seats out of a total of 349 reserved for women make up only 13.5 per cent of membership in the National Assembly, much less than the required 30 per cent. At the Senate, where women are guaranteed at least 18 seats out of a total of 67, their number translates to 26.8 per cent, again less than 30 per cent. That being the case, it would seem that to avoid a constitutional crisis if an election failed to deliver the required number of women, additional women representatives would

need to be nominated. Therefore, as required by Article 27(8), which demands that the state take legislative and other measures to implement the gender representation principle, the Kenyan state, and specifically Parliament, is obligated to develop a legislative formula for an electoral system that meets the representation criterion. The ongoing debate on how to effect the gender provision reveals the extent to which patriarchy is embedded in Kenya and also the threats to women's rights, even when they are legislated.

The Kenyan cabinet in August 2011 decided that it was *technically impossible* to achieve one-third female representation in government, and therefore proposed a Constitutional amendment to remove the *offending* clause (Namunane, 2011; Sigei, 2011). However, following condemnation from the Commission for the Implementation of the Constitution (CIC) and women's rights organizations, who threatened to seek court redress,¹⁸⁴ the government published the Constitution of Kenya (Amendment) Bill, 2011, which offered a formula to be adopted if elections fail to yield the requisite number of women (Ogoya, 2012; Sigei, 2011). The Bill proposed that if not enough women are elected and nominated, the number of legislators would be increased from 349 to 449 in the National Assembly, and from 67 to 90 in the Senate (Amdany, 2012).¹⁸⁵ Unfortunately, the Bill has been pending in Parliament since November 2011, as members have failed to agree on appropriate mechanisms of implementation (Mutua et al., 2012; Rugene, 2012). In fact, some male Members of Parliament have been pushing for the removal of the two-thirds gender rule from the Constitution (ibid.).

Although this study considers women's legislative representation crucial to addressing women's needs, the issue of gender quotas has received a mixed reception from feminist scholars. Those in support view gender quotas as an important policy measure for boosting women's access to decision-making bodies

¹⁸⁴ The results of an opinion poll pertaining to the two-thirds principle also showed that 78 per cent of the Kenyan population were aware of the Constitutional provision on the two-thirds principle and that 74 per cent were in favour of this provision (Leftie & Menya, 2011).

¹⁸⁵ Political parties would be required to draw up standby lists of men and women which would be used to fill gender gaps if election results do not result in the right gender balance. The list would be deposited with the electoral commission before election day.

(Krook, 2009). They argue that quotas are not only likely to improve the level of female representation, but also lead to a more *women-friendly* agenda (Dahlerup, 2006; Murray, 2010). To supporters, the appointment of women brings special and unique qualities to the political process, which benefits society by creating more balanced and integrated decision-making bodies. Supporters of quotas note that, although quotas may not eliminate the barriers that undermine women's participation in politics, they help women to overcome them and thus ensure fairer representation (Dahlerup, 2006; Lovenduski, 2005).

Those opposed to quotas consider them a form of discrimination, and a violation of the principles of fairness, competence and equality of opportunities, while others believe that the practice leads to tokenism and can become yet another mechanism in the service of patronage politics (Tripp, 2006). They argue that quotas undermine the legitimacy of women politicians, and are thought to produce second-class politicians (Bacchi, 2006; Franceschet & Piscopo, 2008; Kolinsky, 1993; Krook, 2008; Zetterberg, 2008).¹⁸⁶ Dahlerup (2006) adds that the focus on the descriptive representation of women fails to evaluate their impact on politics and political process:

The use of electoral quotas challenges our ideas and theories about the relationship between women's political representation and their socio-economic positions, since quotas may lead to unprecedented historical leaps in women's representation without simultaneous changes in women's socio-economic position. (Dahlerup, 2006, p. 4)

Although I agree with some of the arguments against gender quotas, and specifically the observation that adding women to existing social and political structures may do little to eradicate the discrimination and inequities from which they perennially suffer, I support the affirmative action principle as stipulated in Kenya's Constitution. Such provisions mark the potential for institutional transformation, even if their realisation may require additional systemic and structural changes.

¹⁸⁶ The arguments raised here certainly do not provide an exhaustive account of criticisms of quotas.

However, the fact that the nomination and/or appointment of women representatives will take place within the prevailing neo-patrimonial political culture is worrying. Studies in some African countries have shown that although the quota system in countries such as Rwanda and Uganda has significantly enhanced women's presence in representative politics, the ability of the nominated women to influence public policy has been curtailed by patronage (Goetz, 2003). Because women appointed through quotas tend to owe their allegiance to the party leaders who nominated them, they have been unable to champion women's interests, especially if the issues are not supported by the generally male party leadership (Hassim, 2009). In fact, in Uganda, women representatives have been forced by the ruling elite to support bills that are discriminatory towards women (Goetz, 2003). It is therefore possible that the performance of female representatives in the Kenyan legislature will be constrained by the same partisan loyalties as male MPs, as discussed earlier. Clearly, although the new Constitution has provided for women's representation, it has not, and perhaps cannot, provide mechanisms that ensure gender equity as a substantive outcome.

8.3.3. The New Constitution and the Abortion Question

Kenya's new Constitution, although recognising the right to life from conception, provides a stronger protection for the lives and health of women. Whereas the previous law only allowed legal abortion to protect a pregnant woman's life, Section 26 of the new Constitution explicitly permits abortion and clearly specifies the situations in which it is permitted. These include: (i) when there is need for emergency treatment, and (ii) where the life or health of the mother is in danger. Abortions can be offered following the advice of a trained health professional. Section 26 further provides a possibility of expanding the circumstances under which legal abortions can be offered by allowing the enactment of a law for that purpose.¹⁸⁷ Access to legal abortion is further enhanced by Article 43(1) (a), which provides that every person has the right to the highest attainable standard of health care services, including reproductive

¹⁸⁷ The judiciary or Parliament could enact law expanding the conditions under which legal abortion could be offered.

health care. This provision becomes stronger when read within the context of Article 43(2), which prohibits denial of emergency medical treatment.

As they stand, the above noted Constitutional provisions can secure women access to legal abortions in Kenya. If the meaning of “health” in the clause allowing abortion if a pregnancy threatens a woman’s health is interpreted as widely as it is in America,¹⁸⁸ Kenyan women are likely to access legal abortions for extended reasons. Additionally, if the “trained health professionals” mandated to perform abortions is interpreted as including doctors, clinical officers, nurses, and midwives, safe abortions will be available to women in rural areas where doctors might not be available. Moreover, the clause “or if permitted by any other written law” makes clear that the grounds listed in Section 26 of the Constitution are the minimum conditions under which abortion should be legal. In addition to leaving open the possibility for Parliament or the judiciary to pass law to create additional conditions for legal abortion,¹⁸⁹ the clause does not allow for any written law which could limit access to abortion.

It is important to consider that although the above provisions appear sufficient, actualising them will require the state to undertake significant measures to enable access to safe abortion. These, as noted in this study, include providing adequate human and financial resources to reproductive health services, evaluating and attending to the training needs of the different medical personnel, providing education on reproductive health, and facilitating access to contraceptives. Additionally, the state needs to revise the Kenyan Penal Code to reflect the language of the new abortion law, as the threat of legal consequences may make health professionals reluctant to perform abortions.

There is also need for a complete overhaul of health provisioning in the country. For instance, as long as women are required to pay for abortion services, unsafe abortions will continue to be a major problem because unsafe abortion

¹⁸⁸ During the 1973 rulings in *Doe v. Bolton*, the Court defined *health* to include not just physical health, but also psychological, mental and emotional health. The Court cited age, familial circumstances and anything relevant to the woman’s general feeling of well-being as reasons that would justify abortion.

¹⁸⁹ For example if a pregnancy is the result of rape or incest, as it is in Ethiopia (Gebreselassie et al., 2010).

disproportionately affects poor women (see Chapter 7). This problem is evidenced by the fact that unsafe abortion remains a concern in countries such as Ghana and Zambia, where abortion law has been liberalised (Koster-Oyekan, 1998). In both countries, lack of adequate services and continued procedural barriers limit women's access to safe abortions (Lithur, 2004). This does not, however, downplay the importance of the translation of law to policy as a necessary step towards reducing the rate of unsafe abortions in a country. Rather, it points to the need for political will and commitment to ensuring the availability of services.

A bigger problem regarding the availability of abortion services in Kenya is related to the fact that religious organisations control almost a third of health institutions in Kenya (see Chapter 6). During debate and campaigning for the adoption of the new Constitution, religious leaders in the country united in their bid to reject the new laws with claims that it allowed abortion on demand. To date, most church-controlled health centres do not provide contraceptives or abortion, even for needy cases. As such, it is unlikely that abortion services will be available to women in such hospitals. Considering that church-controlled hospitals are sometimes the only available healthcare providers in remote areas, women are likely to continue relying on unqualified people for abortion services – unless, of course, the Kenyan government provides these services.

Thus far, the constitutional reforms in Kenya are clearly signalling the emergence of new structures and values. Whether the proposed radical changes with regard to women's equality before the law will influence the nature of discourses in the public space around women remains to be seen. Although there is room for optimism, the fact that neo-patrimonialism remains unchallenged makes the prospect for a feminist agenda for women's empowerment fragile.

8.4. Recommendations for Future Research

Kenya's new Constitution moderately eases abortion restrictions. An obvious area of future research would thus be an evaluation of the impact of the new abortion laws on the incidence of unsafe abortion. This is important because, as noted earlier, unsafe abortion remains a problem in some African countries, even where it has been legalised. Future research could therefore analyse the factors that have hindered availability of safe abortions in these countries, and perhaps provide a

comparative study with countries such as South Africa and Ethiopia, where legalised abortion has drastically reduced instances of unsafe abortion (Benson et al., 2011).

Another possible area of future research would be to examine and evaluate the significance of increased gender representation in governance. Research might focus on whether increased women's representation has provided women across different social and economic strata with rights and resources that they could not access before, as well as on the impact of numerical increment on legislative priorities. Furthermore, future research can also examine the various ways in which women's presence in government affects, and is affected by, neo-patrimonial politics.

Lastly, researchers in the future can test the robustness and generalisability of the Critical African Feminist Perspective by applying it to an analysis of other issues such as HIV/AIDS, female circumcision and violence against women in Africa and elsewhere in the Third World. The perspective also has the potential to be applied to analysis of issues such as women's access to productive resources including land. Such studies would help consolidate feminist theorising on the post-colonial African state, as well as provide insights into the heuristic potential of this analytical framework.

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Appendixes

Appendix A: Interview Guidelines for the State Actors

1. How would you describe women's position in this country, especially in relation to the state?
2. Is the government a signatory to any international agreements on women's/human rights? If yes, which ones?
3. What has the government done in order to comply with the international agreements' requirements?
4. How is abortion defined by the government?
 - a. Is it a moral issue? [Why or why not?]
 - b. Is it a health issue? [Why or why not?]
 - c. Is it a human rights issue? [Why or why not?]
 - d. Is it an economic issue? [Why or why not?]
5. In the past, civil servants, including a Vice-president and a cabinet minister have given contradictory statements regarding the government's position towards reforming abortion laws in the country. Why do you think this is the case? What is the government's official position and for what reasons?
6. The latest government survey indicated that about 320,000 illegal abortions are performed annually in the country, leading to about 10,000 deaths every year in addition to complication that contribute 60 percent of all gynaecological admission at public hospitals. How does the government deal with this? What are the future plans?
7. Does the government have information on the categories of women most affected by illegal abortions? What mechanisms have been put in place to cater for them?

Appendix B: Interview Guidelines for the non-State Actors (pro-law liberalisation)

1. How would you describe women's position in this country?
2. Is the government a signatory to any international agreements on women's/human rights? If yes, which ones?
3. What has the government done in an order to comply with the international agreement's requirements? What more ought to be done?
4. How is abortion defined by the government? As a moral issue, health issue, right issue or economic issue?
5. How does your organisation define it?
6. Why should abortion be legalised?
7. What is your view of the state's position on abortion?
8. What has your organisation done towards legalisation?
9. How successful have those efforts been? If unsuccessful, why?
10. How should an effective public policy deal with abortion?

Appendix C: Interview Guidelines for the non-State Actors (anti-law liberalisation)

1. How would you describe women's position in this country?
2. What in your opinion is the status of reproductive health in the country?
3. The church maintains that abortion is immoral. What are your comments on the arguments that unsafe abortion
 - a. Is a moral issue? [Why or why not?]
 - b. Is a health issue? [Why or why not?]
 - c. Is a human rights issue? [Why or why not?]
 - d. Is an economic issue? [Why or why not?]
 - e. Is a class issue affecting only poor women? [Why or why not?]
4. What is your comment on the deaths and complications resulting from illegal abortions?
5. Why shouldn't women have access to safe, legal abortion?
6. What efforts does your organisation take to ensure abortion remains illegal in Kenya?
7. How successful have you been so far?
8. What is your message to those campaigning for law liberalisation to allow for abortion?

Appendix D: Information Sheet

Name of Researcher: Jane Wambui Njagi

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Department of Political Science and Public Policy

Private Bag 3105, Hamilton

New Zealand

Phone: +64 7 8563385, +64 210 2919013, 0721530738

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Background:

I am a PhD student in Political Science and Public Policy at the University of Waikato. I am currently undertaking research to complete my doctoral thesis, which focuses on abortion in Kenya. Various groups and individuals have been involved in debates on how to deal with the abortion issue. This research seeks to examine how abortion is understood by the Kenyan state and non-state bodies including the church, medical professionals and women's organisations. It is hoped that this study will make a significant contribution towards understanding the ongoing debate.

Interview Process:

I would like to speak to you about abortion in the country. I am interested in hearing about your views on the issue, including about the Kenyan social, economic and political contexts that frame abortion.

The interview will take about 60-90 minutes, depending on the time you have available. I would like to tape-record the interview so that I can obtain an accurate record of your views.

As a participant, you have the choice of being anonymous or not; this will be discussed at the start of the interview and again at the end of it. I will not use your name or identity in any form in the thesis, unless you give permission.

However, I wish to notify you that even when all these will have been done, confidentiality may be inadvertently breached with people who may be familiar with your opinions and arguments on the issue at hand. I will, on my part, do whatever is humanly possible to protect your identity.

As a participant, the interview transcripts will be made available to you upon request. You have the right to clarify any aspect of the information or issue discussed in the interview within a period of two months after the interview.

Any and all information derived from the interview (e.g. audio recordings, written transcripts) will be held securely in my university office. No one except me or my supervisors will have access to them. They will be stored there until the research is complete and the PhD thesis has been approved and accepted by the University of Waikato. After this period, these research materials will be stored securely for an indefinite period.

If you agree to take part in this interview, you have the following rights:

- a. to refuse to answer any particular question, or to withdraw from the interview at any time,
- b. to ask any further questions about the interview, how it will be used, or the research project at any time either during the interview or up to a period of 2 months after the interview,
- c. to examine any information you have provided and amend any part you wish, and/or request that certain information not be used, up to a period of 2 months after the interview,
- d. to withdraw your consent (written or verbal), up to a period of 2 months, by contacting me at the address above,
- e. to take any complaints you may have about the interview or the research project to the University's Faculty of Arts and Social Sciences' Human Research Ethics Committee (University of Waikato, Private Bag 3105, Hamilton 3240, or you can email its secretary, at fass-ethics@waikato.ac.nz .

- f. You may also contact my thesis supervisor at the following address

Dr. Priya Kurian

Associate Professor

Department of Political Science and Public Policy

Contact phone number: +64 7 838 4466 ext 6109,

Email: pkurian@waikato.ac.nz

Appendix E: Consent Form for In-depth Interviews

University of Waikato
Faculty of Arts and Social Sciences
Department of Political Science and Public Policy

Topic of Study: *Abortion in Kenya*

Name of Researcher: Jane Wambui Njagi

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Dear Participant,

I would like to have an interview with you on abortion in Kenya. Questions will focus on the contemporary issues around abortion in Kenya. The interview will take approximately 60-90 minutes. I would like to tape-record the in-depth interview so that I can obtain an accurate record of your views.

The data (tapes and transcripts) obtained from this research will be used in my PhD thesis although there may be occasions where aspects of it will be used for publication in academic journals, books, media reports or at conferences.

As a participant, you are given the choice of being anonymous or not. Your full name will only be required once, when you sign this consent form. You will have the right to refuse to answer any particular questions, withdraw participation at any time during the interview, and up to two months from the date of the interview. You will also be entitled to ask any questions either during the discussion or at any other time. Further, I will be willing to send to you the interview transcripts and/or a summary of the results of the study, if you wish

This research project has been given approval by the Human Research Ethics Committee of the University's Faculty of Arts and Social Sciences. You may contact the committee at the following email address: fass-ethics@waikato.ac.nz.

"I would like to be identified in the data collected for this doctoral research project"

YES NO (Please circle one)

I would like to have a pseudo-nym

YES NO (Please circle one)

If yes, please print your chosen name

If would like to receive a copy of the transcript,

please print your email address here:

If you would like to receive a summary of the results of this study,

please print your email address here:

"I have read and understood this information and I consent to take part in the study"

Name: Interviewee: _____ Signed: Interviewee:
_____ Date: _____

"I agree to abide by the above conditions"

Name: Interviewer: _____ Signed: Interviewer:
_____ Date: _____

Thank you again. Your time and input are appreciated very much.